

APRIL 11, 2006 AGENDA REPORTS

Agenda Item No. 6a.

City of Wichita
City Council Meeting
April 11, 2006

Agenda Report No. 06-0376

TO: Mayor and City Council

SUBJECT: Transit Service Agreement for Oaklawn Improvement District (District III)

INITIATED BY: Wichita Transit

AGENDA: Consent Agenda

Recommendation: Approve contract to allow Wichita Transit to provide transit service to the Oaklawn Improvement District.

Background: For the past several years, Wichita Transit has provided fixed-route and paratransit van service to the Oaklawn Improvement District. Currently, Sedgwick County reimburses Wichita Transit for the actual cost of providing such service according to a year-by-year contractual agreement. The purpose of this action is to establish the contractual agreement for 2006, with option year 2007.

Analysis: Wichita Transit operates one fixed-route, which provides service to the Oaklawn area. Paratransit service is also provided to Oaklawn based on ADA guidelines (which require service in areas in which fixed-route service is provided). In 2006, an estimated 736 hours of fixed-route service will be provided. The estimated hourly cost for this service is \$46.81 (\$64.74 per hour less revenues and federal funding credit). Paratransit service cost is estimated at \$16.17 per trip, with an estimated 20 trips per month to be provided in 2006.

Financial Considerations: Based on the projected service levels, the total projected revenue from the 2006 agreement will be \$28,297.50 after deducting passenger revenues and federal credit. The adopted 2006 budget includes the expenditure authority necessary to provide the service.

Legal Consideration: City Council approval is required for contracts in excess of \$25,000.

Recommendations/Actions: Approve the contract and authorize the necessary signatures.

TRANSIT SERVICE AGREEMENT
(Oaklawn Improvement District)

THIS AGREEMENT, made and entered into on the _____ day of _____, 2006, by and between the City of Wichita, Kansas, hereafter referred to as "City," and Sedgwick County, Kansas, hereafter referred to as "County."

WITNESSETH:

WHEREAS, County desires to provide public transportation to a certain unincorporated area of Sedgwick County located within and around the general vicinity of the Oaklawn Improvement District; and

WHEREAS, City operates Wichita Transit, which provides public transportation throughout the City of Wichita; and

WHEREAS, County desires to contract with City to provide public transportation through Wichita Transit to said unincorporated area of Sedgwick County.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, the parties hereto agree as follows:

1. City, through Wichita Transit, agrees to provide public transportation to the unincorporated area of Sedgwick County located within and around the general vicinity of the Oaklawn Improvement District through the extension of a bus route to said area by way of Wichita Transit's regular route service. In addition, City will provide paratransit van services to meet Americans With Disabilities Act (ADA) guidelines.

2. Route service will operate Monday through Saturday and will run a minimum of eighteen (18) one-way trips per day. Paratransit services will operate Monday through Saturday and will be provided under present program guidelines. Trip totals are subject to change as demand and/or revenues require, with proper coordination between City and County.

3. County agrees to pay the City's actual costs to operate said services to the Oaklawn Improvement District, which, for 2006, is estimated to cost \$28,297.50. City's costs for this service will not exceed this amount without County approval.

4. City agrees to bill County on a quarterly basis and provide, at the same time, an operating report on the Oaklawn service, which will include ridership trips, passenger fare revenue, and other pertinent information.

5. City shall have sole discretion as to the time, means, and methods of providing bus service on the Oaklawn service, and the only obligation of County pertaining thereto and the only liability assumed by County hereunder is to pay the costs required in paragraph 3 above.

6. Either party may terminate this Agreement upon sixty (60) days' advance written notice to the other party. Such notice may be hand-delivered or sent via first-class mail. Notice must be given by City to the County Clerk, Sedgwick County Counselor's Office, and the director of the Sedgwick County Division of Community Development. Notice must be given by the County to the City Clerk, City of Wichita Department of Law, and the General Manager of Wichita Transit.

7. The term of this Agreement shall be for the period commencing January, 2006, and ending on December 31, 2006, with an option to renew the Agreement under the same terms and conditions for two (2) successive one (1)-year terms by mutual written agreement of the parties.

8. This Agreement is not intended to and, in fact, does not create a partnership or joint venture relationship between the parties hereto. City shall be an independent contractor to County for purposes of this Agreement.

9. The right of the City and County to enter into this agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This agreement shall be construed and interpreted so as to ensure that the City and County shall, at all times, stay in conformity with such laws and, as a condition of this Agreement, the City and County reserve the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be reasonably deemed to violate the terms of such laws.

10. This Agreement constitutes the complete agreement between the parties hereto. No amendment, waiver, or modification of this agreement shall be effective unless reduced to writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

SEDGWICK COUNTY, KANSAS

CITY OF WICHITA, KANSAS

By order of the City Council

David M. Unruh, Chairman

Carlos Mayans, Mayor

Attest:

Attest:

Don Brace

Karen Sublett

Approved as to form:

Approved as to form:

Aaron T. Blase
Assistant County Counselor

Gary E. Rebenstorf
Director of Law and City Attorney

Agenda Item No. 6b.

City of Wichita
City Council Meeting
April 11, 2005

Agenda Report No. 06-0377

TO: Mayor and City Council Members

SUBJECT: Access to Jobs Vendor Agreement

INITIATED BY: Wichita Transit

AGENDA: Consent Agenda

Recommendation: Approve the Access to Jobs Vendor Agreement with the Cerebral Palsy Research Foundation of Kansas, Inc.

Background: The Access to Jobs program provides rides to and from work for low-income workers. Since the start of the program in October 2000, Access to Jobs has provided over 503,818 rides. By entering into a Vendor Agreement with the Cerebral Palsy Research Foundation of Kansas, Inc., we can purchase rides at a cost of \$6.00 a one-way ride. This contract will allow us to provide over 3,600 more rides a year to low-income clients in a very cost effective manner. This is a contract renewal.

Analysis: Part of the Access to Jobs grant is to provide half the cost of rides that non-profit agencies offer low-income clients when they are trying to enter, or re-enter the work force. The other half of those expenses are borne by the agency.

Financial Considerations: The Access to Jobs rides will be purchased with grants from FTA (50%) and the Cerebral Palsy Research Foundation of Kansas, Inc. (50%). No city funds will be involved in the Access to Jobs ride to work program.

Legal Consideration: Vendor Agreement was drafted by the Legal Department.

Recommendations/Actions: It is recommended that the City Council approve the Access to Jobs Vendor Agreement and authorize the necessary signatures.

APPENDIX A

GENERAL CONTRACTUAL PROVISIONS FOR VENDORS

It is mutually agreed by and between the City of Wichita – Wichita Transit and Vendor that it is the purpose of this program that Vendor provide transportation services to “Eligible Passengers” as defined herein, in order to provide access to employment and services that facilitate continued employment. The program is named, “ACCESS To JOBS.”

GENERAL PROVISIONS.

A. AUTHORITY TO CONTRACT.

1. Affirmation of Legal Authority. Vendor assures it possesses legal authority to contract these services, that resolution, motion or similar action has been duly adopted or passed as an official act of Vendor’s governing body, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Vendor to act in connection with the application and to provide such additional information as may be required.
2. Required Documentation. Domestic (Kansas) corporations, limited liability companies, or other business forms requiring statutory conformance shall furnish evidence of good standing in the form of a Certificate signed by the Kansas Secretary of State. Domestic corporations shall furnish a cop of its Corporate Resolution evidencing the authority to sign this Agreement, executed by the Corporation’s Secretary or Assistant Secretary.

B. RELATIONSHIP OF PARTIES.

1. It is agreed that the legal relationship between Vendor and City of Wichita is of a contractual nature. Both parties assert and believe that Vendor is acting as an independent vendor in providing the services and performing the duties required by the City of Wichita hereunder. Vendor is at all times acting as an independent vendor and not as an officer, agent, or employee of the City of Wichita. As an independent vendor, Vendor, and employees of Vendor will not be within the protection or coverage of City of Wichita’s worker’s compensation insurance subject to the provisions of K.S.A. 1997 Supp. 44-505, nor shall Vendor, and employees of Vendor, be entitled to any current or future benefits provided to employees of City of Wichita. Further, City of Wichita shall not be responsible for withholding of social security, federal, and/or state income tax, or unemployment compensation from payments made by City of Wichita to Vendor.

C. PERSONNEL.

1. **Qualified Personnel.** Vendor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any other contractual relationship with City of Wichita. All personnel engaged in the work shall be fully qualified according to the laws of the State of Kansas and the provisions of this Agreement.
2. **Minimum Wages.** Vendor shall comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act.
3. **Employee Conflict of Interest.** Vendor shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
4. **Employee Background Checks.** The parties to this Agreement recognize that those entities or persons providing government-funded services to the public are subject to public scrutiny. Consequently, by entering into this Agreement, Vendor assumes an affirmative and ongoing duty during the term of this Agreement to guarantee and maintain compliance with requirements set forth in Subsection 5 below. Such compliance will require the use of criminal or other legal background checks upon all personnel or agents providing services pursuant to this Agreement, or administering the funds conveyed under this Agreement.
5. **Participant Safeguard.** Vendor certifies that:
 - a) Persons convicted of any felony, drug or drug related offense, crime of falsehood or dishonesty, or a crime against another person during the ten-year period concluding on the date of execution of this Agreement or during the term of this agreement shall not be permitted to provide services, administer this Agreement, or handle the funds conveyed under this Agreement;
 - b) Persons with convictions during the ten-year period concluding on the date of execution of this Agreement or during the pendency of this Agreement for crimes of moral turpitude, including, but not limited to, sex offenses and crimes against children, shall not be permitted to interact in any way with persons served pursuant to this Agreement; and
 - c) Persons having been convicted of a serious driving offense, including but not limited to driving under the influence of alcohol or a controlled substance, during the ten-year period concluding on the date of execution of this Agreement, or during the pendency of this Agreement, shall not be permitted to operate a vehicle in which a person served pursuant to this Agreement is a passenger. For purposes of this section, "serious traffic offense" shall not include any offense deemed a "traffic infraction" under K.S.A. 8-2116 and 8-2118.

d) Any questions concerning the interpretation of this subsection and/or its application to an individual shall be referred to the City of Wichita Department of Law. The Department of Law's decision shall be final for purposes of compliance with this Agreement. The term "conviction" shall include convictions from any federal, state, local, military, or other court of competent jurisdiction, and shall include being placed into a diversion or deferred judgment program in lieu of prosecution.

D. PROHIBITION OF CONFLICTS OF INTEREST.

1. Interest of Public Officials and Others. No officer or employee of the City of Wichita, no member of its governing body, and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to this Agreement which affects such person's personal interest or the interest of any corporation, partnership, or association in which such person is directly or indirectly interested; nor shall any officer or employee of City of Wichita or any member of its governing body or other public official have any interest, direct or indirect, in this Agreement or the proceeds thereof.

2. Interest of Vendor. Vendor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

3. Employee Conflicts. Situations in which a) an employee of the City of Wichita shall also be an employee of the Vendor at the time of the Agreement, b) an employee of the Vendor seeks additional/alternative employment with City of Wichita during term of the Agreement, or c) an employee of the City of Wichita seeks additional/alternate employment with Vendor during term of this Agreement, shall require written notice to the City of Wichita. The City of Wichita shall make every effort to assure that such employees do not have any authority to approve a) grant funds, b) agreements, or c) affiliate status to the Vendor or Vendor's competitors.

E. FUNDING.

1. Cash Basis and Budget Laws. The right of the City of Wichita to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City of Wichita shall at all times stay in conformity with such laws, and as a condition of this Agreement the City of Wichita reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

F. RECORDS, REPORTS AND INSPECTION.

1. Documentation of Costs. All costs incurred by Vendor for which Vendor purports to be entitled to reimbursement shall be supported by proper invoices, vouchers, or other documentation evidencing in proper detail the nature and propriety of charges. All checks, invoices, vouchers, payrolls, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible to both parties to this Agreement.
2. Maintenance of Records. Except as otherwise authorized by City of Wichita, Vendor shall retain such documentation as listed in paragraphs F1 and F3 for a period of three (3) years after receipt of the final expenditure report under this Agreement, unless action, including but not limited to litigation or audit resolution proceedings, necessitate maintenance of records beyond the three (3) year period.
3. Reports. During the term of this Agreement, Vendor shall furnish City of Wichita, in such form as City of Wichita may require, such statements, records, reports, data and information as City of Wichita requests pertaining to matters covered by this Agreement. Payments to Vendor will be withheld by City of Wichita if Vendor fails to provide all required reports in a timely, complete and accurate manner, until such time as all reports are furnished to City of Wichita.
4. Audit. Vendor shall provide for an annual independent audit of its financial records, which apply to this Agreement only and shall supply a copy of said audit to City of Wichita.
5. Availability of Records. Vendor agrees to make any and all of its records, books, papers, documents, and data available to City of Wichita, or to the authorized representative of the federal, state or local agency with statutory oversight authority, for the purposes of assisting in litigation or pending litigation, or making audits, examinations, excerpts, copies, and transcriptions at any time during the term of this Agreement and for a period of three (3) years following the final payment under the terms of this Agreement.
6. Confidentiality. Both parties will comply with the provisions of State and federal regulations in regard to confidentiality of eligible participant records.

G. METHOD OF BILLING AND PAYMENT.

1. Billing Procedures. Vendor agrees that billings and payments made under this Agreement shall be processed in accordance with established budgeting, purchasing and accounting procedures of the City of Wichita. Payment shall be made as soon as procedures allow after receipt of billing.
 - a) Monthly Billing. A monthly billing system will be used and all billings, statements, and other necessary supporting documentation must be submitted by the 15th day of the month following the billing period. Failure to submit timely billings will result in extended delays in receiving payment from City of Wichita for such services.

- b) Billing Content. All billings from Vendor to City of Wichita shall include an itemization of each ride provided with the units of service, date of ride, Eligible Passengers names, and total rides or units of service provided for each passenger.
 - c) Billing Procedure. City of Wichita will process the billings, verify the information/data submitted, and issue a check pursuant to City of Wichita's standard purchasing procedures.
 - d) Charges for Service. Transportation reimbursements will be made on a per hour basis. The cost per trip within the geographical confines of the City of Wichita will be at a rate of \$14.00 per hour.
 - e) Extended Trips. Trips made beyond the geographical boundaries of the City of Wichita, will be at a higher rate than that set forth in and above. The rate for these trips will be negotiated as the need for service expansion warrants.
 - f) Rates Reviewed. Trip rates will be reviewed on a quarterly basis, and may be subject to revision. Any change in trip rates will be agreed upon by the City and Vendor, in writing, before implementation.
- 2. Support Documentation. Billing shall be supported with documentation required by City of Wichita including, but not necessarily limited to, that documentation described in Section F above.
 - 3. Reimbursement Restrictions. Payments shall be made to Vendor only for items and services provided to support the Agreement purpose when such items and services are specifically authorized by this Agreement. City of Wichita reserves the right to disallow reimbursement for any item or service billed by Vendor if City of Wichita believes that such item or service was not provided to support the Agreement purpose or was not authorized by Agreement.
 - 4. Service by Vendor.
 - a) Service is to be provided by the Vendor in a prompt and courteous manner. Passengers are to be authorized by the City before Vendor provides eligible rides. Passengers are to be picked up no later than fifteen (15) minutes after the scheduled pick-up time. If a situation dictates, that the fore-mentioned condition may not be met, Vendor must contact City immediately.
 - b) Vendor must have a back-up system in place to ensure that authorized rides from the City are provided and that no Eligible Passenger is left stranded.
 - c) Vendor will not collect any charge from an Eligible Passenger.

- d) Vendor shall comply with the Federal Drug and Alcohol regulations, as set forth in Appendix C. Pre-employment, post accident, and random tests shall be conducted for any and all safety sensitive Vendor positions that perform duties under the terms of this Agreement.

H. LICENSES AND PERMITS.

Vendor shall maintain all licenses, permits, certifications, bonds, and insurance required by federal, state or local authority for carrying out this Agreement. Vendor shall maintain worker's compensation insurance in amounts not less than minimum statutory requirements. Vendor shall notify City of Wichita immediately if any required license, permit, bond or insurance is cancelled, suspended, or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may form the basis for immediate revocation by City of Wichita, in its discretion.

I. INSURANCE.

Vendor shall provide to City of Wichita a Certificate of Insurance evidencing Comprehensive General Liability, Professional Liability, and Comprehensive Automobile Liability coverage as follows:

- 1) Bodily Injury: \$500,000 Each Occurrence
- 2) Property Damage: \$500,000 Each Occurrence
- 3) Personal Injury: \$500,000 Each Person
- 4) Automobile Liability
(owned, not owned, hired, rented or otherwise):
 - a) Bodily Injury \$500,000 Each Accident
 - b) Property Damage \$500,000 Each Accident
- 5) Professional Liability \$500,000
- 6) Workers Compensation /
Employers Liability \$100,000 Each Accident

J. SUBCONTRACTING.

None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City of Wichita. All approved subcontracts must conform to applicable requirements set forth in this Agreement and in its appendices, exhibits and amendments, if any. Notwithstanding the City of Wichita's consent to any subcontractors, vendors shall remain fully responsible for all obligations of this Agreement, including indemnification of City of Wichita for all acts of subcontractors.

K. TERMINATION OF AGREEMENT.

1. Termination for Cause. If Vendor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Vendor shall violate any of the terms, covenants, conditions or stipulations of this Agreement, City of Wichita shall thereupon have the right to terminate this Agreement by giving written notice to Vendor of such termination, specifying the effective date thereof.

In the event of termination, such information prepared by Vendor to carry out this Agreement, including data, studies, surveys, records, drawings, maps, and reports shall, at the option of the City of Wichita, become the property of the City of Wichita and be immediately turned over to the City of Wichita. Vendor shall be entitled to just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, Vendor shall not be relieved of liability to City of Wichita by virtue of any breach of this Agreement by Vendor and City of Wichita may withhold any payments to Vendor for the purpose of set off until such time as the exact amount of damages due City of Wichita from Vendor are determined.

2. Termination of Agreement on Other Grounds. This Agreement may be terminated in whole or in part by either party, upon thirty (30) days written notice, stating the effective date of the termination. A partial termination shall also be specified in writing by the terminating party and shall not be effective unless and until the other party has given its written assent thereto.

L. NOTIFICATION.

Any formal notice required or permitted under this Agreement shall be deemed sufficiently given if in writing and delivered by public or private carrier, personal delivery, sent by registered or certified mail (return receipt requested) or sent by means of telefacsimile or telecopier, to the party whom said notice is to be given. Notices delivered in person or sent via telefacsimile or telecopier shall be deemed to be served effective as of the date the notice is delivered or sent. Notices sent by registered or certified mail (return receipt requested) shall be deemed to be served forty-eight (48) hours after the date said notice is postmarked to the addressee, postage prepaid.

Contractor: City of Wichita – Wichita Transit
Attn: General Manager
Address: 777 E. Waterman
Phone: (316) 352-4824
Fax: (316) 352-9287

Vendor: Attn: Susan Robinson
Address: 5111 E. 21
Phone: (316) 652-1578
Fax: (316) 651-5214

M. MISCELLANEOUS.

1. The failure of either party to insist upon the strict performance of any of the terms or conditions of this Agreement or to exercise any option, right or remedy herein contained, should not be construed as a waiver or relinquishment for the future of such term, provision, option, right or remedy. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by the waiving party.
2. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.
3. In the event that any provision in this Agreement shall be adjudicated invalid under applicable laws, such invalid provision shall automatically be considered reformed and amended so as to conform to all applicable legal requirements, or, if such invalidity cannot be cured by reformation or amendment, the same shall be considered stricken and deleted, but in neither such event or events shall the validity or enforceability of the remaining valid portions hereof be affected thereby.
4. Both parties hereto represent and agree that: (I) they have reviewed all aspects of this Agreement; (ii) they have been given the opportunity to review this Agreement with counsel; and (iii) they have carefully read and fully understand all provisions of this Agreement.

APPENDIX A

GENERAL CONTRACTUAL PROVISIONS FOR VENDORS

It is mutually agreed by and between the City of Wichita – Wichita Transit and Vendor that it is the purpose of this program that Vendor provide transportation services to “Eligible Passengers” as defined herein, in order to provide access to employment and services that facilitate continued employment. The program is named, “ACCESS To JOBS.”

GENERAL PROVISIONS.

M. AUTHORITY TO CONTRACT.

3. Affirmation of Legal Authority. Vendor assures it possesses legal authority to contract these services, that resolution, motion or similar action has been duly adopted or passed as an official act of Vendor’s governing body, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Vendor to act in connection with the application and to provide such additional information as may be required.

4. Required Documentation. Domestic (Kansas) corporations, limited liability companies, or other business forms requiring statutory conformance shall furnish evidence of good standing in the form of a Certificate signed by the Kansas Secretary of State. Domestic corporations shall furnish a copy of its Corporate Resolution evidencing the authority to sign this Agreement, executed by the Corporation's Secretary or Assistant Secretary.

N. RELATIONSHIP OF PARTIES.

2. It is agreed that the legal relationship between Vendor and City of Wichita is of a contractual nature. Both parties assert and believe that Vendor is acting as an independent vendor in providing the services and performing the duties required by the City of Wichita hereunder. Vendor is at all times acting as an independent vendor and not as an officer, agent, or employee of the City of Wichita. As an independent vendor, Vendor, and employees of Vendor will not be within the protection or coverage of City of Wichita's worker's compensation insurance subject to the provisions of K.S.A. 1997 Supp. 44-505, nor shall Vendor, and employees of Vendor, be entitled to any current or future benefits provided to employees of City of Wichita. Further, City of Wichita shall not be responsible for withholding of social security, federal, and/or state income tax, or unemployment compensation from payments made by City of Wichita to Vendor.

O. PERSONNEL.

6. Qualified Personnel. Vendor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any other contractual relationship with City of Wichita. All personnel engaged in the work shall be fully qualified according to the laws of the State of Kansas and the provisions of this Agreement.

7. Minimum Wages. Vendor shall comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act.

8. Employee Conflict of Interest. Vendor shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

9. Employee Background Checks. The parties to this Agreement recognize that those entities or persons providing government-funded services to the public are subject to public scrutiny. Consequently, by entering into this Agreement, Vendor assumes an affirmative and ongoing duty during the term of this Agreement to guarantee and maintain compliance with requirements set forth in Subsection 5 below. Such compliance will require the use of criminal or other legal background checks upon all personnel or agents providing services pursuant to this Agreement, or administering the funds conveyed under this Agreement.

10. Participant Safeguard. Vendor certifies that:

e) Persons convicted of any felony, drug or drug related offense, crime of falsehood or dishonesty, or a crime against another person during the ten-year period concluding on the date of execution of this Agreement or during the term of this agreement shall not be permitted to provide services, administer this Agreement, or handle the funds conveyed under this Agreement;

f) Persons with convictions during the ten-year period concluding on the date of execution of this Agreement or during the pendency of this Agreement for crimes of moral turpitude, including, but not limited to, sex offenses and crimes against children, shall not be permitted to interact in any way with persons served pursuant to this Agreement; and

g) Persons having been convicted of a serious driving offense, including but not limited to driving under the influence of alcohol or a controlled substance, during the ten-year period concluding on the date of execution of this Agreement, or during the pendency of this Agreement, shall not be permitted to operate a vehicle in which a person served pursuant to this Agreement is a passenger. For purposes of this section, "serious traffic offense" shall not include any offense deemed a "traffic infraction" under K.S.A. 8-2116 and 8-2118.

h) Any questions concerning the interpretation of this subsection and/or its application to an individual shall be referred to the City of Wichita Department of Law. The Department of Law's decision shall be final for purposes of compliance with this Agreement. The term "conviction" shall include convictions from any federal, state, local, military, or other court of competent jurisdiction, and shall include being placed into a diversion or deferred judgment program in lieu of prosecution.

P. PROHIBITION OF CONFLICTS OF INTEREST.

4. Interest of Public Officials and Others. No officer or employee of the City of Wichita, no member of its governing body, and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to this Agreement which affects such person's personal interest or the interest of any corporation, partnership, or association in which such person is directly or indirectly interested; nor shall any officer or employee of City of Wichita or any member of its governing body or other public official have any interest, direct or indirect, in this Agreement or the proceeds thereof.

5. Interest of Vendor. Vendor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

6. Employee Conflicts. Situations in which a) an employee of the City of Wichita shall also be an employee of the Vendor at the time of the Agreement, b) an employee of the Vendor seeks additional/alternative employment with City of Wichita during term of the Agreement, or c) an employee of the City of Wichita seeks additional/alternate employment with Vendor during term of this Agreement, shall require written notice to the City of Wichita. The City of Wichita shall make every effort to assure that such employees do not have any authority to approve a) grant funds, b) agreements, or c) affiliate status to the Vendor or Vendor's competitors.

Q. FUNDING.

2. Cash Basis and Budget Laws. The right of the City of Wichita to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City of Wichita shall at all times stay in conformity with such laws, and as a condition of this Agreement the City of Wichita reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

R. RECORDS, REPORTS AND INSPECTION.

7. Documentation of Costs. All costs incurred by Vendor for which Vendor purports to be entitled to reimbursement shall be supported by proper invoices, vouchers, or other documentation evidencing in proper detail the nature and propriety of charges. All checks, invoices, vouchers, payrolls, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible to both parties to this Agreement.

8. Maintenance of Records. Except as otherwise authorized by City of Wichita, Vendor shall retain such documentation as listed in paragraphs F1 and F3 for a period of three (3) years after receipt of the final expenditure report under this Agreement, unless action, including but not limited to litigation or audit resolution proceedings, necessitate maintenance of records beyond the three (3) year period.

9. Reports. During the term of this Agreement, Vendor shall furnish City of Wichita, in such form as City of Wichita may require, such statements, records, reports, data and information as City of Wichita requests pertaining to matters covered by this Agreement. Payments to Vendor will be withheld by City of Wichita if Vendor fails to provide all required reports in a timely, complete and accurate manner, until such time as all reports are furnished to City of Wichita.

10. Audit. Vendor shall provide for an annual independent audit of its financial records, which apply to this Agreement only and shall supply a copy of said audit to City of Wichita.

11. Availability of Records. Vendor agrees to make any and all of its records, books, papers, documents, and data available to City of Wichita, or to the authorized representative of the federal, state or local agency with statutory oversight authority, for the purposes of assisting in litigation or pending litigation, or making audits, examinations, excerpts, copies, and transcriptions at any time during the term of this Agreement and for a period of three (3) years following the final payment under the terms of this Agreement.

12. Confidentiality. Both parties will comply with the provisions of State and federal regulations in regard to confidentiality of eligible participant records.

S. METHOD OF BILLING AND PAYMENT.

5. Billing Procedures. Vendor agrees that billings and payments made under this Agreement shall be processed in accordance with established budgeting, purchasing and accounting procedures of the City of Wichita. Payment shall be made as soon as procedures allow after receipt of billing.

g) Monthly Billing. A monthly billing system will be used and all billings, statements, and other necessary supporting documentation must be submitted by the 15th day of the month following the billing period. Failure to submit timely billings will result in extended delays in receiving payment from City of Wichita for such services.

h) Billing Content. All billings from Vendor to City of Wichita shall include an itemization of each ride provided with the units of service, date of ride, Eligible Passengers names, and total rides or units of service provided for each passenger.

i) Billing Procedure. City of Wichita will process the billings, verify the information/data submitted, and issue a check pursuant to City of Wichita's standard purchasing procedures.

j) Charges for Service. Transportation reimbursements will be made on a per hour basis. The cost per trip within the geographical confines of the City of Wichita, will be at a rate of \$14.00 per hour.

k) Extended Trips. Trips made beyond the geographical boundaries of the City of Wichita, will be at a higher rate than that set forth in and, above. The rate for these trips will be negotiated as the need for service expansion warrants.

l) Rates Reviewed. Trip rates will be reviewed on a quarterly basis, and may be subject to revision. Any change in trip rates will be agreed upon by the City and Vendor, in writing, before implementation.

6. Support Documentation. Billing shall be supported with documentation required by City of Wichita including, but not necessarily limited to, that documentation described in Section F above.

7. Reimbursement Restrictions. Payments shall be made to Vendor only for items and services provided to support the Agreement purpose when such items and services are specifically authorized by this Agreement. City of Wichita reserves the right to disallow reimbursement for any item or service billed by Vendor if City of Wichita believes that such item or service was not provided to support the Agreement purpose or was not authorized by Agreement.

8. Service by Vendor.

- e) Service is to be provided by the Vendor in a prompt and courteous manner. Passengers are to be authorized by the City before Vendor provides eligible rides. Passengers are to be picked up no later than fifteen (15) minutes after the scheduled pick-up time. If a situation dictates, that the fore-mentioned condition may not be met, Vendor must contact City immediately.
- f) Vendor must have a back-up system in place to ensure that authorized rides from the City are provided and that no Eligible Passenger is left stranded.
- g) Vendor will not collect any charge from an Eligible Passenger.
- h) Vendor shall comply with the Federal Drug and Alcohol regulations, as set forth in Appendix C. Pre-employment, post accident, and random tests shall be conducted for any and all safety sensitive Vendor positions that perform duties under the terms of this Agreement.

T. LICENSES AND PERMITS.

Vendor shall maintain all licenses, permits, certifications, bonds, and insurance required by federal, state or local authority for carrying out this Agreement. Vendor shall maintain worker's compensation insurance in amounts not less than minimum statutory requirements. Vendor shall notify City of Wichita immediately if any required license, permit, bond or insurance is cancelled, suspended, or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may form the basis for immediate revocation by City of Wichita, in its discretion.

U. INSURANCE.

Vendor shall provide to City of Wichita a Certificate of Insurance evidencing Comprehensive General Liability, Professional Liability, and Comprehensive Automobile Liability coverage as follows:

- 1) Bodily Injury: \$500,000 Each Occurrence
- 2) Property Damage: \$500,000 Each Occurrence
- 3) Personal Injury: \$500,000 Each Person
- 4) Automobile Liability
(owned, not owned, hired, rented or otherwise):
 - a) Bodily Injury \$500,000 Each Accident
 - b) Property Damage \$500,000 Each Accident
- 5) Professional Liability \$500,000
- 6) Workers Compensation /
Employers Liability \$100,000 Each Accident

V. SUBCONTRACTING.

None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City of Wichita. All approved subcontracts must conform to applicable requirements set forth in this Agreement and in its appendices, exhibits and amendments, if any. Notwithstanding the City of Wichita's consent to any subcontractors, vendors shall remain fully responsible for all obligations of this Agreement, including indemnification of City of Wichita for all acts of subcontractors.

W. TERMINATION OF AGREEMENT.

3. Termination for Cause. If Vendor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Vendor shall violate any of the terms, covenants, conditions or stipulations of this Agreement, City of Wichita shall thereupon have the right to terminate this Agreement by giving written notice to Vendor of such termination, specifying the effective date thereof.

In the event of termination, such information prepared by Vendor to carry out this Agreement, including data, studies, surveys, records, drawings, maps, and reports shall, at the option of the City of Wichita, become the property of the City of Wichita and be immediately turned over to the City of Wichita. Vendor shall be entitled to just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, Vendor shall not be relieved of liability to City of Wichita by virtue of any breach of this Agreement by Vendor and City of Wichita may withhold any payments to Vendor for the purpose of set off until such time as the exact amount of damages due City of Wichita from Vendor are determined.

4. Termination of Agreement on Other Grounds. This Agreement may be terminated in whole or in part by either party, upon thirty (30) days written notice, stating the effective date of the termination. A partial termination shall also be specified in writing by the terminating party and shall not be effective unless and until the other party has given its written assent thereto.

X. NOTIFICATION.

Any formal notice required or permitted under this Agreement shall be deemed sufficiently given if in writing and delivered by public or private carrier, personal delivery, sent by registered or certified mail (return receipt requested) or sent by means of telefacsimile or telecopier, to the party whom said notice is to be given. Notices delivered in person or sent via telefacsimile or telecopier shall be deemed to be served effective as of the date the notice is delivered or sent. Notices sent by registered or certified mail (return receipt requested) shall be deemed to be served forty-eight (48) hours after the date said notice is postmarked to the addressee, postage prepaid.

Contractor: City of Wichita – Wichita Transit
Attn: General Manager
Address: 777 E. Waterman
Phone: (316) 352-4824
Fax: (316) 352-9287

Vendor:

Attn: Susan Robinson
Address: 5111 E. 21
Phone: (316) 652-1578
Fax: (316) 651-5214

M. MISCELLANEOUS.

5. The failure of either party to insist upon the strict performance of any of the terms or conditions of this Agreement or to exercise any option, right or remedy herein contained, should not be construed as a waiver or relinquishment for the future of such term, provision, option, right or remedy. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by the waiving party.

6. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

7. In the event that any provision in this Agreement shall be adjudicated invalid under applicable laws, such invalid provision shall automatically be considered reformed and amended so as to conform to all applicable legal requirements, or, if such invalidity cannot be cured by reformation or amendment, the same shall be considered stricken and deleted, but in neither such event or events shall the validity or enforceability of the remaining valid portions hereof be affected thereby.

8. Both parties hereto represent and agree that: (i) they have reviewed all aspects of this Agreement; (ii) they have been given the opportunity to review this Agreement with counsel; and (iii) they have carefully read and fully understand all provisions of this Agreement.

APPENDIX B VENDOR / CITY CONTRACTUAL DUTIES

GENERAL CONDITIONS.

A. DEFINITIONS.

1. Unit of Service. One, one-way trip equals one unit of service per Eligible Passenger. A round trip taken by an Eligible Passenger equals two units of service.

2. Service. Transportation to and from specific employment or employment related site as authorized by City for Eligible Passengers.

3. Eligible Passenger. Residents of the greater Wichita Employment area who are certified and approved as eligible by City of Wichita – and COMCARE.

B. VENDOR DUTIES:

1. Vendor agrees that any funds provided for services under this Agreement will be paid on a fee-for-services basis only.
2. Vendor shall be subject to annual audit in accordance with the provisions set forth in Appendix A.
3. Vendor agrees that its records used in preparation of all reports are subject to review by City to ensure the accuracy and validity of the information reported.
4. Vendor shall promptly provide notice to the City if it is unable to provide the required quantity or quality of services.
5. Vendor agrees that all rides are to be pre-authorized by the City.
6. Vendor shall maintain all applicable records on such forms as designated by the City.
7. Vendor agrees that they will not provide “private” or unauthorized rides to Eligible Passengers.
8. Vendor shall comply with the Federal Drug and Alcohol regulations as set forth in Appendix C. Pre-employment, post accident, and random tests shall be conducted for any and all safety sensitive Vendor positions that perform duties under the terms of this Agreement.
9. Service is to be provided by the Vendor in a prompt and courteous manner. Passengers are to be authorized by the City for eligible rides. Passengers are to be picked up no later than fifteen (15) minutes after the scheduled pick up time. If conditions dictate that this is not possible for a particular trip, Vendor must notify City immediately.
10. Vendor must have a back up system in place to ensure that authorized rides from City are provided and that no Eligible Passenger is left stranded.
11. Vendor will not collect any charge from the Eligible Passenger.
12. Vendor must utilize car seats and booster seats, as per K.S.A. 8-1344, and K.S.A. 8-2501, when transporting minors (14 and under).

C. CITY DUTIES:

1. Provide all Administrative services necessary to implement the program.

2. Oversee the daily exercise of the program and assure compliance of the regulations as set forth in the entire contractual document.
3. Schedule and coordinate all transportation rides with the appropriate Vendor.
4. Issue payments to Vendor as described in Appendix A, based on authorized trips.

APPENDIX C FEDERAL AND STATE REGULATIONS

U. S. FEDERAL

FTA has developed certain Standard Terms and Conditions required by DOT. These contractual provisions required by DOT, as set forth in FTA Circular 4220.1C, dated May 1, 1995, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Vendor shall not perform any act, fail to perform any act, or refuse to comply with any City requests, which would cause the City to be in violation of the FTA terms and conditions.

A. PROJECT IMPLEMENTATION

1. Application of Federal, State, and Local Laws and Regulations:

a) Federal laws or laws authorizing Project approval control Project implementation. The Vendor acknowledges that Federal laws, regulations, policies, and related administrative practices applicable to the Project on the date the authorized City official signs the Master Agreement may be modified from time to time. In particular, new Federal laws, regulations, policies, and administrative practices may be promulgated after the date when the Vendor executes the Master Agreement, and might apply to that Master Agreement. The Vendor agrees that the most recent of such Federal requirements will govern the administration of the Project at any particular time, unless FTA issues a written determination otherwise. FTA's written determination may be issued as a Special Condition or Requirement within the Master Agreement or a letter signed by the Federal Transit Administrator, the language of which modifies or otherwise conditions the text of a particular provision of this Master Agreement. All standards or limits within this Master Agreement are minimum requirements, unless modified by FTA.

b) Except when a Federal statute or regulation preempts State of Kansas, City of Wichita, or territorial law, no provision of the Master Agreement shall require the Vendor to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State of Kansas, City of Wichita, or territorial law. Thus if any provision or compliance with any provision of the Grant Agreement, Cooperative Agreement or this Master Agreement violate State of Kansas, City of Wichita, or territorial law, or would require the Vendor to violate State of Kansas, City of Wichita, or territorial law, the Vendor agrees to notify the City immediately in writing. Should this occur, the City and the Vendor agree to make appropriate arrangements to proceed with or, if necessary, terminate the Project as quickly as possible.

2. Vendor's Responsibility to Federal Requirements.

a) Entities Affected - Only the entities that are signatories to this Master Agreement for the Project are parties to that agreement. Accordingly, the City agrees to take appropriate measures necessary to ensure all Project participants comply with applicable Federal requirements affecting their performance.

b) Documents Affected - Applicable provisions of the Federal statutes, regulations, and directives establishing that Federal requirement determine the extent to which a specific Federal requirement affects a Vendor as participant. Accordingly, the Vendor agrees to ensure that they will comply with applicable Federal requirements.

3. No Federal Government Obligations to Third Parties. The Vendor agrees that, absent either Federal, State of Kansas, or City of Wichita Governments express written consent, the Governments shall not be subject to any obligations or liabilities to any recipient, or any other person not a party to the Master Agreement in connection with the performance of the Project. Notwithstanding any concurrence provided by the Governments in or approval of any solicitation, or sub-agreement, the Governments continue to have no obligations or liabilities to any party.

4. Changes in Project Performance (including Disputes, Breaches, Defaults or Litigation). The Vendor agrees to notify the City immediately of any change in conditions (such as its legal, financial, or technical capacity), or any other event that may significantly affect the Vendors ability to perform the Project in accordance with the terms of the Master Agreement. In addition, the Vendor agrees to notify the City immediately of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Governments interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. The Vendor agrees to inform the City before naming either the City or the Federal Government as a party to litigation for any reason, in any forum.

B. CIVIL RIGHTS

The Vendor agrees to comply with all applicable civil rights statutes, and implementing regulations including, but not limited to the following:

1. Nondiscrimination in Transit Programs. The Vendor agrees to comply with the provisions of 49 U.S.C. § 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

2. Nondiscrimination - Title VI of the Civil Rights Act. The Vendor agrees to comply with all requirements prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally Assisted Programs of the Department of

Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21, and any implementing requirements FTA may issue.

3. Equal Employment Opportunity. The Vendor agrees to comply with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332 and any implementing requirements FTA may issue. Those equal employment opportunity (EEO) requirements include, but are not limited to, the following:

The Vendor agrees it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Vendor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor also agrees to comply with any implementing requirements FTA may issue.

In carrying out this contract, Contractor shall deny none of the benefits or services of the program to any eligible participant pursuant to K.S.A. 44-1001 et seq.

A. Contractor shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, disability, national origin, or ancestry.

B. In all solicitations or advertisements for employees, Contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.

C. If Contractor fails to comply the provisions of K.S.A. 44-1031, requiring reports to be submitted to the Kansas Human Rights Commission when requested by that Commission, Contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part, by County.

D. If Contractor is found guilty of a violation of the Kansas act against discrimination under a decision or order of the Kansas Human Rights Commission which has become final, Contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part by County.

E. Contractor shall include the provisions of paragraphs A through D inclusively of this section in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

F. The provisions of this section shall not apply to a contract entered into by a contractor who: 1) employs fewer than four employees during the term of this contract; or 2) whose contracts with the County cumulatively total \$5,000.00 or less during the fiscal year of the County pursuant to K.S.A. 44-1031(c).

4. Nondiscrimination on the Basis of Sex. To the extent applicable, the Vendor agrees to comply with Title IX of the Education Amendments of 1972, as amended, 20 U. S.C. § § 1680 et seq., which prohibit discrimination on the basis of sex., and any subsequent Federal requirements.

5. Nondiscrimination on the Basis of Age. The Vendor agrees to comply with the applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S. C. § § 61 01 et seq., and implementing regulations, which prohibits discrimination on the basis of age.

6. Access Requirements for Persons with Disabilities. The Vendor agrees to comply with the requirements of 49 U. S. C. § 5 3 01 (d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Vendor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S. C. § § 121 01 et seq., which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

(a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(c) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(d) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(f) U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(g) U.S. Equal Employment Opportunity Commission, "Regulations to implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

(i) FTA regulations, "Transportation for Elderly and Handicapped Persons, 49 C.F.R. Part 609; and

(j) Any implementing requirements FTA may issue.

7. Drug or Alcohol Abuse: Confidentiality and Other Civil Rights Protections. The Vendor agrees to comply with the confidentiality and other civil rights provisions of the Drug Abuse Office and Treatment Act of 1972, Pub. L. 92-255, March 21, 1972, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Pub. L. 91-616, Dec. 31, 1970, and the Public Health Service Act of 1912, 42 U.S. C. § § 290dd-3 and 290ee-3, including any amendments to these acts.

8. Other Nondiscrimination Statutes. The Vendor agrees to comply with any other nondiscrimination statute(s) that may apply to the Project.

ENERGY CONSERVATION.

The Vendor agrees to comply with the mandatory energy efficiency standards and policies within the applicable energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.

SUBSTANCE ABUSE.

1. Drug Abuse.

(a) The Vendor agrees to comply with U.S. DOT regulations, "Drug-Free Workplace Requirements(Grants)," 49 C.F.R. Part 29, Subpart F, as modified by 41 U.S.C. §§ 702 et seq.

(b) To the extent applicable, the Vendor agrees to comply with FTA regulations, "Prevention of Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 653, and any guidance on the drug abuse provisions of 49 U.S.C. § 5331 that FTA or U.S. DOT may issue.

2. Alcohol Abuse. To the extent applicable, the Vendor agrees to comply with FTA regulations, "Prevention of Alcohol Misuse in Transit Operations," 49 C.F.R. Part 654, and any guidance on the alcohol abuse provisions of 49 U.S.C. § 5331 that FTA or U.S. DOT may issue.

STATE OF KANSAS

A. AGREEMENT WITH KANSAS LAW.

All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

B. DISCLAIMER OF LIABILITY.

Neither the State of Kansas nor any agency thereof, nor the City, shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

C. RESPONSIBILITY FOR TAXES.

Neither the State of Kansas, nor the City, shall be responsible for, nor indemnify a contractor for, any federal, state or local taxes, which may be imposed or levied upon the subject matter of this contract.

Agenda Item No. 6c.

City of Wichita
City Council Meeting
April 11, 2006

Agenda Report No. 06-0378

TO: Mayor and City Council

SUBJECT: Asset Management Agreement

INITIATED BY: Department of Finance

AGENDA: Consent

Recommendation: Approve the agreement.

Background: On September 25, 2001, the City Council approved the purchase of the Hyatt Regency Wichita Hotel. The City become the sole owner of the Hyatt Regency Wichita and assumed responsibility for oversight over various operational and financial areas with respect to management of the Hyatt. Day-to-day management of the hotel is contracted to the Hyatt Hotel Corporation. To provide expert assistance in the oversight of hotel management activities, the City engaged the services of PKF Consulting to serve as the City's Hotel Asset Manager. The term of the PKF asset management contract expired at the end of 2005.

Analysis: Asset management is defined as the oversight of the long-term value of the hotel as a real estate entity, while maintaining the business value and profitability of the operations of the hotel. The asset manager is an agent of the hotel owner (the City) and provides a knowledgeable and experienced interface between the owner and the management company. The asset manager makes recommendations to the hotel owner concerning performance and improvements relative to the management of the hotel, capital budgets, the condition of the physical plant, financial reporting, monitoring of the contract compliance, and so on.

PKF Consulting of Houston, Texas has served as the City's principal advisor on its dealings respecting the Hyatt Regency Hotel, going back to the original market feasibility study and selection of the hotel developer and in completing the transfer of ownership. PKF has visited the property on a quarterly basis and met with hotel management personnel (and the City) to evaluate operations and progress with any changes, capital improvement projects, etc. and reviewed in detail the financial performance of the hotel.

PKF consulting is a national leader in the field of hospitality consulting services, with offices in most major cities in the U.S. and overseas. John Keeling is a senior vice president in charge of the Houston Office of PKF Consulting and has been involved in the Hyatt Regency Wichita project since its inception. Mr. Keeling and his firm have rendered valuable service as the City's Hotel Asset Manager. PKF has been involved in projects such as the room remodel as well as the promenade area connecting Century II.

Under the terms of the contract renewal, it is proposed that PKF will evaluate monthly operating and financial results, follow up with management to determine the reasons for material variances, visit the property on a quarterly basis and meet with hotel management personnel (and the City) to evaluate operations and progress with any changes, capital improvement projects, etc. and annually will evaluate the Market Plan, Annual Plan and the Capital Budget. The proposed term of the renewed engagement of PKF consulting as the Hotel Asset Manager is for a two year term ending December 31, 2007.

Financial Considerations: The proposed compensation for on-going hotel asset management services from PKF Consulting are \$3,000 per month, which result in annual charges of \$36,000, plus expenses estimated not-to-exceed \$10,000 per year. There is no increase from the prior contract. The source of funding of the City's hotel asset management costs will be from hotel operating cash flow.

Legal Considerations: The proposed agreement for hotel asset management services has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the agreement for hotel asset management services with PKF Consulting and authorize necessary signatures.

Agenda Item No. 6d.

City of Wichita
City Council Meeting
April 11, 2006

Agenda Report No. 06-0379

TO: Mayor and City Council

SUBJECT: Supplemental Agreement Groundwater Release Assessment – Brooks Landfill (District VI).

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Supplemental Agreement and authorize the Mayor to sign.

Background: On February 10, 2004, The City Council approved an agreement with Burns & McDonnell for a KDHE required groundwater release assessment just south of the Brooks Landfill. The original work has been complied to the satisfaction of KDHE. KDHE is now requiring the City to install two new sentinel groundwater wells to monitor the plume's extent and the levels of the contaminants as they degrade naturally over time.

Analysis: Burns & McDonnell is well equipped to prepare a plan for submission to KDHE on the appropriate location of the wells and to oversee the installation of the wells once they are approved by KDHE.

Financial Considerations: The amount of the original agreement was not to exceed \$50,820. The amount of the supplemental agreement will not exceed \$8,180. Sufficient funds are available in the Brooks Landfill Post Closure Fund Budget to cover the cost of these supplemental services and the use of these funds will be reflected in the 2006 Revised Budget when it is considered by the City Council later this year.

Legal Considerations: The supplemental agreement has been reviewed by the Law Department and approved as to form.

Recommendations/Actions: It is recommended that the City Council approve the Supplemental Agreement and authorize the Mayor to sign.

Agenda Item No. 8a.

CITY OF WICHITA
City Council Meeting
April 11, 2006

Agenda Report No. 06-0380

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of Land for Right-of-Way at 11500 West 29th Street North for Roadway Project (District V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On March 8, 2005, the City Council approved the reconstruction of 29th Street North between Maize Road and 119th Street. The project consists of an upgrade from a two-lane roadway to a four-lane roadway with landscaped medians and left turn lanes into adjoining residential neighborhoods. A new storm water sewer system will be installed to eliminate ditches along the roadway. The project requires the partial acquisition of several tracts of land for right-of-way purposes.

Analysis: The project requires the acquisition of a 41,851.27 square feet strip along the existing road-right-of-way of 11500 West 29th Street North. The subject property is a rural farmstead developed with a single-family residence and several out buildings. The land appraised at \$38,000, or the equivalent to \$0.91 per square foot, and damages to landscaping and trees was valued at \$32,775 for a total of \$70,775. This amount was offered to the property owner and declined. A counter offer of \$95,555 was presented based on \$1.50 per square foot and the appraised value of the landscaping and trees.

Financial Considerations: A budget of \$97,000 is requested for the acquisition. This amount includes \$95,555 for the acquisition and \$1,445 for closing costs and title insurance. The funding source is General Obligation Bonds and Federal Grants administrated by the Kansas Department of Transportation.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the Real Estate Purchase Contract; 2) Approve the budget and; 3) Authorize all necessary signatures.

Agenda Item No. 8b.

CITY OF WICHITA
City Council Meeting
April 11, 2006

Agenda Report No. 06-0381

TO: Mayor and City Council Members

SUBJECT: Acquisition of Permanent Easement and Pipeline Easement for Integrated Local Water Supply Plan

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On August 3, 1993 the City Council approved the Water Supply Plan prepared by Burns & McDonnell/MKEC Engineering Consultants. The Plan identified cost-effective water resource projects to meet the City's future water needs. On October 10, 2000 City Council approved the projects and implementation of the plan. One portion of the Water Supply Plan is the groundwater recharge project which includes the capture of above base flow water (water which is generated from rainfall runoff above the base river flow) in the Little Arkansas River, the transfer to and storage of captured water in the aquifer, and the recovery and use of this water to meet future demands for the City of Wichita.

Analysis: Twenty-two sites were identified as necessary for the location of a twenty-four inch water line to serve recharge/recovery wells, recharge well, or recharge basins. This specific site requires a pipeline easement, a permanent easement for a river intake well and a temporary construction easement. The parcel is improved with both a residential homesite and agricultural crops. Landscaping, a domestic well and fencing will be impacted by the project. Estimates to cure these items total \$11,935. The property owner has agreed to convey said easements in exchange of \$21,580.00.

Financial Considerations: A budget of \$22,500 is requested; this includes \$21,580 for acquisition and \$920 for title work, title insurance and closing costs. Funding for this project is included in the CIP in W-549, Water Supply Plan Phase III, which has an available funding of over \$7.6 million

Legal Considerations: The Law Department has approved the contracts as to form.

Recommendation: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the easements; and 3) Authorize all necessary signatures.

Agenda Item No. 8c.

CITY OF WICHITA
City Council Meeting
April 11, 2006

Agenda Report No. 06-0382

TO: Mayor and City Council Members

SUBJECT: Acquisition of Vacant Land for Right-of-Way in 11,000 Block of West 29th Street North for Roadway Project (District V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On March 8, 2005, the City Council approved the reconstruction of 29th Street North between Maize Road and 119th Street. The project consists of an upgrade from a two-lane roadway to a four-lane roadway with landscaped medians and left turn lanes into adjoining residential neighborhoods. A new storm water sewer system will be installed to eliminate ditches along the roadway. The project requires the partial acquisition of several tracts of land for right-of-way purposes.

Analysis: The project requires the acquisition of a 35,813.97 square feet strip along the existing road-right-of-way of the parcel located on the south side of the road in the 11,000 Block of West 29th Street North. The land was valued at \$36,000.00. This amount was offered to the property owner and accepted.

Financial Considerations: A budget of \$37,500 is requested for the acquisition. This amount includes \$36,000 for the acquisition and \$1,500 for closing costs and title insurance. The funding source is General Obligations Bonds and Federal Grants administrated by the Kansas Department of Transportation.

Legal Considerations: The Law Department has approved the contact as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the budget; 2) Approve the Real Estate Purchase Contract and: 3) Authorize all necessary signatures.

Agenda Item No. 9.

CITY OF WICHITA
City Council Meeting
April 11, 2006

Agenda Report No. 06-0383

TO: Mayor and City Council Members

SUBJECT: Sale of Surplus Land in the 1700 Block of South Exchange
(District III)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the sale.

Background: An offer has been received for a City-owned parcel on the east side of Greenway Boulevard between Osie and Funston. The subject consists of eight contiguous irregular shaped lots without any improvements. The properties were acquired in conjunction with the construction of Greenway Boulevard along the Arkansas River in 1931. These have been surplused since 1995. The irregular shaped tract along the Boulevard contains a total of 0.24 acres. It extends for approximately 210 feet north along the Boulevard. It is 87 feet wide at the south, narrowing to 20 feet wide.

Analysis: The buyer's residence is the adjacent land to the south. The acquisition will provide them with additional land further north to extend their yard. The buyer has offered \$1,800 for the City's interest in the land. Based on site configuration and the nature of the City's title, the proposed offer of \$1,800 is deemed reasonable.

Financial Considerations: The City will receive cash consideration from the sale of the property at closing. Upon sale, the property will return to the tax rolls and the City will no longer be responsible for maintenance.

Legal Considerations: The Law Department has approved the contracts as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the Real Estate Purchase Contracts; and 2) Authorize all necessary signatures.

Agenda Item No. 10.

City of Wichita
City Council Meeting
April 11, 2006

Agenda Report No. 06-0384

TO: Mayor and City Council

SUBJECT: Asbestos Survey and Related Services (All Districts)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve Vendor Selection.

Background: Various City departments require asbestos survey services for demolition and remodeling projects as required by the Environmental Protection Agency (EPA) and the Kansas Department of Health and Environment (KDHE). Request for Proposals (RFP) (FP600006) were mailed to companies performing these services on January 16, 2006.

Analysis: Five (5) firms responded to the proposal as follows: Allied Environmental Consultants (AEC) at \$75,500, Asbestos Consulting and Testing (ACT) at \$33,390, Integrated Solutions, Inc. (ISI) at \$34,312, Minority Contractors & Consultants, Inc. (MCCI) at \$28,065, and Precision Environmental Services (PES) at \$31,025.

The Staff Screening & Selection Committee (SS&SC) at their March 3, 2006 meeting took the following actions:

- One of the most critical aspects of who is hired is based on their ability to respond quickly with a quick turn around for providing an inspection report. The firm of ACT was eliminated because they are located in Lenexa, KS.
- The firm of AEC was eliminated because of their high fee proposal.
- ISI, MCCI and PES were selected for interview based on their fee proposals and qualifications.

The SS&SC interviewed the firms of ISI and Precision Environmental Services on March 15, 2006. MCCI pulled their response to the RFP because the City does not allow the same firm to perform the asbestos survey and abatement. MCCI is the current abatement contractor.

The committee voted unanimously to select the firm of Precision Environmental Services for this project based on their fee proposal and qualifications.

Financial Considerations: RFP respondents quoted delivered prices on the equipment, material and services based on the square foot of the facility to be surveyed and unit prices for testing and sampling. Quantities were estimates only. The Contract will not obligate the City to any specific purchases or volume of purchases on asbestos surveys. It only provides the departments the ability to obtain asbestos surveys from the most qualified, cost-effective vendor. The Contract is for one (1) year with an option to renew for one (1) successive year period by mutual agreement of both parties.

Legal Considerations: The Law Department will review and approve the Contract as to form.

Recommendations/Actions: It is recommended that the City Council approve the selection of Precision Environmental Services, authorize the Purchasing Manager to negotiate a Contract and approve the necessary signatures.

Agenda Item No. 11.

City of Wichita
City Council Meeting
April 11, 2006

Agenda Report No. 06-0385

TO: Mayor and City Council Members

SUBJECT: Services for TriState/Harcros Remediation Project
(Districts III)

INITIATED BY: Department of Environmental Services

AGENDA: Consent

Recommendation: Approve the design/build/operate Contract with Burns and McDonnell.

Background: The City is required by an agreement with the Kansas Department of Health and Environment (KDHE) to cleanup identified soil and groundwater contamination sites (also known as source areas) located within the Gilbert-Mosley remediation area. The Harcros/TriState site is a source area located within the Gilbert-Mosley remediation area that consists of two properties located at and around 724 and 727 East Osie Street. Technical services will be needed to design, build, and operate the remediation equipment with the goal to cleanup the specific contamination area to levels approved by KDHE. Additional services will include a work plan, a pilot study, system evaluations, environmental monitoring, and preparation and submittal of site status and closure reports as approved by the City of Wichita and the Kansas Department of Health and Environment.

Analysis: In accordance with the City of Wichita's Charter Ordinance No. 111 for Public Improvement Design/Build Projects and in accordance with Administrative Regulation 1.2, Contracting for Professional Services, proposals were mailed to qualified firms on December 5, 2005. Seven firms responded on January 9, 2006 and a Staff Screening Selection Committee (comprised of City representatives) was convened on January 25, 2006 to review the proposals. At that time, a short list of three firms, Camp, Dresser, & McKee, Burns and McDonnell, and Aquaterra Environmental Solutions, were selected for further evaluation. On January 30, 2006, the Staff Screening and Selection Committee reconvened to listen to presentations of the three firms. The committee selected the firm of Burns and McDonnell.

Financial Considerations: The cost of the project will be funded through the Gilbert and Mosley TIF (Tax Increment Finance District) fund and is not expected to exceed \$500,000 including contingencies. This cost also includes an option to extend technical services and operation and maintenance of the remediation system. ES staff is expecting the overall cost to be much less.

Legal Considerations: The Law Department has approved the Contract as to form.

Recommendations/Actions: It is recommended that the City Council approve the Contract and authorize the necessary signatures.

Agenda Item 12.

City of Wichita
City Council Meeting
April 11, 2006

Agenda Report 06-0386

TO: Mayor and City Council

SUBJECT: Lattner Foundation Grant Application for WATER Center Education Exhibits

INITIATED BY: Department of Environmental Services

AGENDA: Consent

Recommendations: Approve the grant application and award, if received.

Background: The environmental education component of the Wichita Area Treatment, Education and Remediation (WATER) Center addresses water quality resources focusing on public education edregarding hydrological processes, groundwater remediation, impacts to public health and the environment, and the inter-relationship between groundwater and the Arkansas River. The facility provides a unique and important educational destination for schools, civic groups, and the general public.

In 2003, a preliminary WATER Center education exhibit development plan was prepared by the firm of has selected Taylor Studios for the design and construction of the center's exhibits. The firm provided for the design of the exhibits for the Herman Hill/Gilbert-Mosley Environmental Education Facility. The draft contract has been reviewed by both the Legal Department and the Purchasing Department. Taylor Studios has performed other projects in area such as the "Fossil Dig" at Exploration Place and all of the new exhibits for Dillon Nature Center in Hutchinson. Conceptual exhibit designs though discussions and interaction with local and state educational institutions, staff, and other community organizations and developed and provided a "design book" of proposed exhibits for the facility. The firm also developed projected construction costs that will be used for funding solicitation. This grant would aid in funding the water education exhibits at the WATER Center.

The grant application deadline was March 1, 2006. Under authority of City of Wichita Administrative Regulation No. 61, the City Manager is authorized to submit the grant application where delay would invalidate the grant application.

Analysis: The Department of Environmental Services requests authorization to apply for the Forrest C. Lattner Foundation grant. The grant would fund new hands-on environmental education exhibits at the WATER Center. The educational component of the WATER Center has been designed similarly to that of the Great Plains Nature Center. Once exhibits and displays were installed, the Nature Center was able to reach 150,000 visitors per year. The WATER Center's objective is to provide a similarly large number of visitors with an enhanced educational experience on water quality, protection and conservation, pollution prevention, and environmental stewardship.

Financial Considerations: The Department of Environmental Services is requesting Forrest C. Lattner Foundation grant funding of \$25,000. The grant does not require matching funds from the city.

Recommendation/Action: It is recommended the City Council approve the grant application, authorize the necessary signatures, and receive funds if awarded the grant.

Agenda Item 13.

City of Wichita
City Council Meeting
April 5, 2005 April 11, 2006

Agenda Report No. 06-0387

TO: Mayor and Members of the City Council

SUBJECT: Kansas Health Foundation Recognition Grant Funds for the Senior Wednesday Program at WATER Center

INITIATED BY: Department of Environmental Services

AGENDA: Consent

Recommendation: Approve the WATER Center's portion of the Kansas Health Foundation Recognition Grant for the Senior Wednesday program.

Background: The WATER Center is part of a local informal coalition of museums focusing their efforts once a month specifically on seniors through a program called Senior Wednesdays. This program began as a monthly offering of the Wichita Art Museum Inc. for senior adults in June 2004. By February of 2005, programs were being presented on additional Wednesdays of each month by the Sedgwick County Zoo, Ulrich Museum of Art at WSU and Wichita-Sedgwick County Historical Museum. In the summer and fall of 2005, programs for seniors were held at the Wichita Public Library, CityArts, the WATER Center, and Exploration Place. This program directly impacts the health of Senior adults by enhancing their quality of life through community involvement, lifelong learning and the opportunity to socialize with other senior adults.

Analysis: The Wichita Art Museum's Senior Wednesday program was awarded a Kansas Health Foundation Recognition Grant. The grant is managed by the Wichita Art Museum Inc. (who submitted the grant application). The grant money will be used to fund a study on the program's impact to the senior community, to offset the market costs associated with the program and to fund the program costs of the eight museums involved in presenting Senior Wednesday programs.

Financial Considerations: The Wichita Art Museum Inc. has awarded \$2,000 to the WATER Center for the 2006 Senior Wednesday Program from the Kansas Health Foundation Recognition Grant. There is no match required. The WATER Center agrees to:

- To use the grant monies toward Senior Wednesday programming, and
- To collect and provide program records as requested by the Kansas Health Foundation.

Legal Considerations: The Department of Law has approved the grant award as to form.

Recommendation/Action: Approve grant award and authorize the necessary signatures.

Agenda Item No. 15.

City of Wichita
City Council Meeting
April 11, 2006

Agenda Report No. 06-0388

TO: Mayor and City Council Members

SUBJECT: Development Agreement for the Northeast Baseball Complex
(District II)

INITIATED BY: Department of Park and Recreation

AGENDA: Unfinished

Recommendation: It is recommended that the City Council approve the selection of Central Plains Youth Sports (CPYS) as the preferred developer for the baseball/softball facility.

Background: In 1999, the City of Wichita purchased 60 acres near 29th Street North and Greenwich Road, adjacent to the Stryker Soccer complex. The land was purchased with the intent to build a new baseball complex in that sector of the City. In 2001, the CIP had \$1 million set aside to start design and construction of the new baseball complex. During the design phase it was determined that in order to build the complete baseball/softball complex, staff would either need to develop a partnership with a private entity or seek approval of additional CIP funding. In 2003, the City received its only Request For Proposal (RFP) response from CPYS, a registered non-profit organization.

Analysis: The project will be developed in several stages with the understanding that CPYS will develop and build at least ten (10) youth baseball/softball fields within eight years of the signed and approved agreement.

Financial Considerations: The approved CIP still has \$870,000 remaining from the original approved \$1,000,000 budget after the designed costs were paid. Use of the remaining CIP funding is completely dependent upon structuring the project so that it is a bondable "public improvement". If appropriate terms to accomplish this can be negotiated in the development agreement, bond proceeds will be used to reimburse construction costs consistent with the terms of the negotiated agreement.

Legal Considerations: The Law Department will assist in further negotiation of the proposed development agreement, and if appropriate agreement terms can be finalized, staff will bring it back to Council for approval by Ordinance, upon a 2/3 vote, as required under Charter Ordinance No. 177.

Recommendation/Action: It is recommended that the City Council approve the selection of Central Plains Youth Sports (CPYS) as the preferred developer for the baseball/softball facility, and authorize the creation of a development agreement to be approved by the City Council at a later date.

Agenda Item 16.

City of Wichita
City Council Meeting
April 11, 2006

Agenda Report No. 06-0389

TO: Mayor and City Council

SUBJECT: Arkansas River Corridor Access Plan
(Districts I, III, IV, V & VI)

INITIATED BY: Department of Park and Recreation

AGENDA: New Business

Recommendation: Approve the Memoranda of Understanding (MOU) with the City of Hutchinson, City of South Hutchinson and Reno County. Approve entering into cooperative partnership with those making financial contributions for the Arkansas River Corridor Access Plan. Approve soliciting Request for Qualifications (RFQ) for a planning consultant for the Arkansas River Access Plan.

Background: On August 9, 2005 City Council approved \$30,000 for the Arkansas River Corridor Access Plan. The City Council approved a "Letter or Agreement" with the Kansas Department of Wildlife and Parks (KDWP) and agreed to work together to develop a coalition of partnerships to fund a study for an access plan which would identify key areas along the Arkansas River from Rice County to the Oklahoma border for corridor access for recreation purposes.

Since that time, KDWP and the City of Wichita have solidified commitments from several surrounding communities to financially support the plan. The following is the current complete listing of financial commitments.

KDWP	\$30,000
City of Wichita	\$30,000
Sedgwick County	\$10,000
Reno County	\$ 5,000
City of Hutchinson	\$ 2,500
Arkansas River Coalition	\$ 1,000
City of South Hutchinson	\$ 500
Sumner County	\$ 500
City of Oxford	<u>\$ 500</u>
Total	\$80,000

The nine partners above identified the scope of the access plan that would include the stretch of the Arkansas River from the Rice/Reno County line to the City of Oxford. The City of Wichita Park and Recreation Department will lead an effort to develop a Request for Qualifications and obtain a planning consultant to develop a plan which will best serve the citizens for river access in this region.

The City of Hutchinson, South Hutchinson and Reno County have requested that an MOU be obtained from the City of Wichita as part of their commitment to ensure their interest in the plan. The MOU's for the City of Hutchinson, City of South Hutchinson and Reno County are attached.

Analysis: The Strategic Plan and Visioneering Study identifies the Arkansas River as an important strategy of our goal to make Wichita and surrounding areas a more attractive place to live and enjoy. Through this process, citizens have voiced the need to make this valuable resource more accessible.

The financial commitments from the partners demonstrate the value of recreation and access to the Arkansas River. It also demonstrates the need to begin a process to develop a plan that will provide a blueprint for the future development of Arkansas River access points. The access plan has the potential to create a recreational asset for our region of the state and a model for other connecting communities. Furthermore, it facilitates or "puts into action" the vision of the Strategic Plan and Visioneering Study as a tool to promote the Arkansas River.

Financial Considerations: The total amount of funding for this plan is currently \$80,000. The City's Park and Recreation Department will take the lead role in managing this study in cooperation with the Kansas Department of Wildlife and Parks. The City will collaborate with the other partners in development of the Arkansas River Access Plan. If other partners wanting to be a part of this plan make commitments, then the scope and cost of this study may increase.

Legal Considerations: The Law Department has reviewed and approved the MOU's from the City of Hutchinson, South Hutchinson and Reno County.

Recommendation/Action: It is recommended that City Council 1) approve the partnerships of the entities identified for financial contribution to the plan, 2) approve soliciting RFQ's for the Arkansas River Corridor Access Plan, 3) approve the Memoranda of Understandings, and 4) authorize the necessary signatures.

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WICHITA KANSAS AND THE CITY OF HUTCHINSON REGARDING THE ARKANSAS RIVER ACCESS DEVELOPMENT AND ARKANSAS RIVER CORRIDOR STUDY

This Memorandum of Understanding (MOU) is entered into this ____ day of _____, 2006, between the following parties: The City of Wichita Kansas, hereinafter referred to as the City and The City of Hutchinson, hereinafter referred to as The City of Hutchinson.

WHEREAS, the City of Hutchinson owns several tracts of land and right of ways along the Arkansas River in Reno County, and

WHEREAS, the City of Hutchinson desires to develop safe access and provide the basic facilities needed to allow the public to enjoy a productive, safe and enjoyable recreational experience by use of the lands.

NOW THEREFORE, in consideration of the premises and of the mutual covenants set forth below, the Parties agree as follows:

THE CITY OF HUTCHINSON AGREES TO THE FOLLOWING:

1. To compensate the City for a portion of the cost of a contract for a study of the Arkansas River corridor from all of Reno County to Oxford, KS, including all of Sedgwick County and the City of Wichita. The purpose of the study will be to identify the best sites to develop small watercraft launching sites and associated facilities, and to identify land ownership and access routes to those sites.

2. Payment will be made in one payment of \$2,500.00. The payment of \$2,500.00 shall be due at the time both parties sign this MOU.

CITY AGREES TO THE FOLLOWING:

1. To develop the corridor study guidelines with input from the City of Hutchinson; make a request for proposals; select a consultant and coordinate with the consultant to complete the corridor study.
2. Make the results of the study available to the City of Hutchinson for the purpose of coordinating on the prioritization of future sites to be developed and to help secure grants for additional funding of those sites.

BOTH PARTIES AGREE TO THE FOLLOWING:

1. Every provision of this MOU is subject to the laws of the State of Kansas.
2. All provisions concerning access to the consultant by the parties or the public and protection of the report's confidentiality shall be subject to the terms of any final agreement between City and consultant.

3. This memorandum is strictly limited to issues of funding the corridor study. The parties understand and agree that there is no promise of the content of the studies' findings, that sites to develop launching sites will be constructed or that any additional routes will be developed.
4. To cooperate in the recognition of each party's participation in this program.
5. This MOU may be amended only by written mutual agreement of both parties.
6. Information concerning Arkansas River Corridor Study, made through this MOU shall be made available to any member of the public, upon appropriate request in conformity to the Kansas Open Records Act and subject to Item Number 2 listed above.
7. This agreement may be terminated by either party to this MOU by providing written notification to the other party at least 30 days prior to expected termination. All remaining unused funding shall then be returned to the City of Hutchinson and an accounting of funds used shall then be provided to the City of Hutchinson.
8. Upon breach of any provision of this MOU, the City of Hutchinson may request the City return part or all of the funding provided, as well as the incomplete work product subject to any restrictions or limitations pursuant to Item Number 2 listed above.
9. The provisions found in Contractual Provisions Attachment (for DA-146a), identified as Attachment 1 is hereby incorporated in this Contract.
10. Completion of the project shall be determined solely by the City.
11. Each party shall act in their individual capacity and not as agents, employees, partners, in joint venture, or as associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
12. Both the City and the City of Hutchinson agree not to assign this MOU to any other entity, nor the respective rights or duties thereof.
13. Equal opportunity to participate in and benefit from programs described herein is available to all individuals without regard to their race, color, religion, national origin or ancestry, sex, age, or disability.
14. This MOU and its Attachments shall constitute the entire source of authority between the parties and shall control the relationship between the parties, regardless of any relationship between the parties.
15. Certify, by placement of signature to this MOU, that neither they nor any of their principals, subcontractors and suppliers used on this project are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in such an agreement by any Federal or State Department or Agency.
16. All data, information, or other products produced under this MOU shall be the property of the City. Documents or other materials produced under this MOU shall not be copyrighted. Any documents, publications, or public presentations required by the City of Hutchinson shall contain an acknowledgment that the funding for this project was obtained, at least in part, from the designated City of Hutchinson funds.
17. All parties signing this MOU hereby attest to authorization as a signatory for the respective entities involved.
18. In the event any of the provisions of this MOU are deemed to be invalid or unenforceable, the same shall be deemed severable from the remainder of the MOU. If such provision shall be deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.

19. The City of Hutchinson's failure at any time to require strict performance by the City of any of the provisions of this MOU shall not waive or diminish the City of Hutchinson's right thereafter to demand strict compliance therewith or with any provision.
20. Upon completion of the study, any remaining funds will be returned to participants in the proportion to the total funding by each.

This MOU is effective upon the last signing by a duly authorized representative of the aforementioned parties.

CITY OF WICHITA, KANSAS

By _____ Date: _____ By _____
Date: _____
Carlos Mayans, Mayor George Kolb, City Manager
City of Wichita

By _____ Date: _____ By _____ Date: _____
Karen Sublett, City Clerk John Deardoff, City Manager
City of Hutchinson

Approved as to form:

_____ Date: _____
Gary E. Rebenstorf
Director of Law

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WICHITA
KANSAS AND THE CITY OF SOUTH HUTCHINSON REGARDING THE ARKANSAS
RIVER ACCESS DEVELOPMENT AND ARKANSAS RIVER CORRIDOR STUDY

This Memorandum of Understanding is entered into this ____ day of _____, 2006,
between the following parties: The City of Wichita Kansas, hereinafter referred to as the City
and City of South Hutchinson, hereinafter referred to as the City of South Hutchinson.

WHEREAS, the City of South Hutchinson owns several tracts of land and right of ways
along the Arkansas River in Reno County, and

WHEREAS, the City of South Hutchinson desires to develop safe access and provide the
basic facilities needed to allow the public to enjoy a productive, safe and enjoyable
recreational experiences by use of the lands.

NOW THEREFORE, in consideration of the premises and of the mutual covenants set forth below, the Parties agree as follows:

CITY OF SOUTH HUTCHINSON AGREES TO THE FOLLOWING:

1. To compensate the City for a portion of the cost of a contract for a study of the Arkansas River corridor from all of Reno County to Oxford, KS, including all of Sedgwick County and the City of Wichita. The purpose of the study will be to identify the best sites to develop small watercraft launching sites and associated facilities and to identify land ownership and access routes to those sites.

3. Payment will be made in one payment of \$500.00. The payment of \$500.00 shall be due at the time both parties sign this MOU.

CITY AGREES TO THE FOLLOWING:

2. To develop the corridor study guidelines with input from the City of South Hutchinson; make a request for proposals; select a consultant and coordinate with the consultant to complete the corridor study.

2. Make the results of the study available to the City of South Hutchinson for the purpose of coordinating on the prioritization of future sites to be developed and to help secure grants for additional funding of those sites.

BOTH PARTIES AGREE TO THE FOLLOWING:

21. Every provision of this MOU is subject to the laws of the State of Kansas.

22. All provisions concerning access to the consultant by the parties or the public and protection of the report's confidentiality shall be subject to the terms of any final agreement between City and consultant.

23. This memorandum is strictly limited to issues of funding the corridor study. The parties understand and agree that there is no promise of the content of the studies' findings, that sites to develop launching sites will be constructed or that any additional routes will be developed.

24. To cooperate in the recognition of each party's participation in this program.

25. This MOU may be amended only by written mutual agreement of both parties.

26. Information concerning Arkansas River Corridor Study, made through this MOU shall be made available to any member of the public, upon appropriate request in conformity to the Kansas Open Records Act and subject to item number 2 listed above.

27. This agreement may be terminated by either party to this MOU by providing written notification to the other party at least 30 days prior to expected termination. All remaining unused funding shall then be returned to the City of South Hutchinson and an accounting of funds used shall then be provided to the City of South Hutchinson.

28. Upon breach of any provision of this MOU, the City of South Hutchinson may request the City return part or all of the funding provided, as well as the incomplete work product subject to any restrictions or limitations pursuant to item number 2 listed above.

29. The provisions found in Contractual Provisions Attachment (for DA-146a), identified as Attachment 1 is hereby incorporated in this Contract.

30. Completion of the project shall be determined solely by the City.

31. Each party shall act in their individual capacity and not as agents, employees, partners, in joint venture, or as associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

32. Both the City and the City of South Hutchinson agree not to assign this MOU to any other entity, nor the respective rights or duties thereof.

33. Equal opportunity to participate in and benefit from programs described herein is available to all individuals without regard to their race, color, religion, national origin or ancestry, sex, age, or disability.

34. This MOU and its Attachments shall constitute the entire source of authority between the parties and shall control the relationship between the parties, regardless of any relationship between the parties.

35. Certify, by placement of signature to this MOU, that neither they nor any of their principals, subcontractors and suppliers used on this project are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in such an agreement by any Federal or State Department or Agency.

36. All data, information, or other products produced under this MOU shall be the property of the City. Documents or other materials produced under this MOU shall not be copyrighted. Any documents, publications, or public presentations required by the City of South Hutchinson shall contain an acknowledgment that the funding for this project was obtained, at least in part, from the designated City of South Hutchinson funds.

37. All parties signing this MOU hereby attest to authorization as a signatory for the respective entities involved.

38. In the event any of the provisions of this MOU are deemed to be invalid or unenforceable, the same shall be deemed severable from the remainder of the MOU. If such provision shall be deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.

39. The City of South Hutchinson's failure at any time to require strict performance by the City of any of the provisions of this MOU shall not waive or diminish City of South Hutchinson's right thereafter to demand strict compliance therewith or with any provision.

40. Upon completion of the study, any remaining funds will be returned to participants in the proportion to the total funding by each.

This MOU is effective upon the last signing by a duly authorized representative of the aforementioned parties.

CITY OF WICHITA, KANSAS

By _____
Carlos Mayans, Mayor
City of Wichita

By _____
Erwin Leeper, Mayor
City of South Hutchinson

Approved as to form:

By _____ By _____
Karen Sublett, City Clerk Gary E. Rebenstorf, Director of Law
City of Wichita City of Wichita

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WICHITA
KANSAS AND RENO COUNTY REGARDING THE ARKANSAS RIVER ACCESS
DEVELOPMENT AND ARKANSAS RIVER CORRIDOR STUDY**

This Memorandum of Understanding (MOU) is entered into this _____ day of _____, 2006, between the following parties: The City of Wichita Kansas, hereinafter referred to as the City and Reno County, hereinafter referred to as the County.

WHEREAS, the County owns several tracts of land and right of ways along the Arkansas River in Reno County, and

WHEREAS, the County desires to develop safe access and provide the basic facilities needed to allow the public to enjoy a productive, safe and enjoyable recreational experiences by use of the lands.

NOW THEREFORE, in consideration of the premises and of the mutual covenants set forth below, the Parties agree as follows:

COUNTY AGREES TO THE FOLLOWING:

1. To compensate the City for a portion of the cost of a contract for a study of the Arkansas River corridor from all of Reno County to Oxford, KS, including all of Sedgwick County and the City of Wichita. The purpose of the study will be to identify the best sites to develop small watercraft launching sites and associated facilities and to identify land ownership and access routes to those sites.

4. Payment will be made in one payment of \$5,000.00. The payment of 5,000.00 shall be due at the time both parties sign this MOU.

CITY AGREES TO THE FOLLOWING:

3. To develop the corridor study guidelines with input from the County; make a request for proposals; select a consultant and coordinate with the consultant to complete the corridor study.

2. Make the results of the study available to the County for the purpose of coordinating on the prioritization of future sites to be developed and to help secure grants for additional funding of those sites.

BOTH PARTIES AGREE TO THE FOLLOWING:

41. Every provision of this MOU is subject to the laws of the State of Kansas.
42. All provisions concerning access to the consultant by the parties or the public and protection of the report's confidentiality shall be subject to the terms of any final agreement between City and consultant.
43. This memorandum is strictly limited to issues of funding the corridor study. The parties understand and agree that there is no promise of the content of the studies' findings, that sites to develop launching sites will be constructed or that any additional routes will be developed.
44. To cooperate in the recognition of each party's participation in this program.
45. This MOU may be amended only by written mutual agreement of both parties.
46. Information concerning Arkansas River Corridor Study, made through this MOU shall be made available to any member of the public, upon appropriate request in conformity to the Kansas Open Records Act and subject to item number 2 listed above.
47. This agreement may be terminated by either party to this MOU by providing written notification to the other party at least 30 days prior to expected termination. All remaining unused funding shall then be returned to the County and an accounting of funds used shall then be provided to the County.
48. Upon breach of any provision of this MOU, the County may request the City return part or all of the funding provided, as well as the incomplete work product subject to any restrictions or limitations pursuant to item number 2 listed above.
49. The provisions found in Contractual Provisions Attachment (for DA-146a), identified as Attachment 1 is hereby incorporated in this Contract.
50. Completion of the project shall be determined solely by the City
51. Each party shall act in their individual capacity and not as agents, employees, partners, in joint venture, or as associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
52. Both the City and the County agree not to assign this MOU to any other entity, nor the respective rights or duties thereof.
53. Equal opportunity to participate in and benefit from programs described herein is available to all individuals without regard to their race, color, religion, national origin or ancestry, sex, age, or disability.
54. This MOU and its Attachments shall constitute the entire source of authority between the parties and shall control the relationship between the parties, regardless of any relationship between the parties.
55. Certify, by placement of signature to this MOU, that neither they nor any of their principals, subcontractors and suppliers used on this project are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in such an agreement by any Federal or State Department or Agency.
56. All data, information, or other products produced under this MOU shall be the property of the City. Documents or other materials produced under this MOU shall not be copyrighted. Any documents, publications, or public presentations required by the County shall contain an acknowledgment that the funding for this project was obtained, at least in part, from the designated County funds.
57. All parties signing this MOU hereby attest to authorization as a signatory for the respective entities involved.

58. In the event any of the provisions of this MOU are deemed to be invalid or unenforceable, the same shall be deemed severable from the remainder of the MOU. If such provision shall be deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.

59. The County's failure at any time to require strict performance by the City of any of the provisions of this MOU shall not waive or diminish County's right thereafter to demand strict compliance therewith or with any provision.

60. Upon completion of the study, any remaining funds will be returned to participants in the proportion to the total funding by each.

This MOU is effective upon the last signing by a duly authorized representative of the aforementioned parties.

CITY OF WICHITA, KANSAS

By _____
Carlos Mayans, Mayor
City of Wichita

By _____
Frances E. Schoepf, Chairman
Reno County

Approved as to form:

By _____
Karen Sublett, City Clerk
City of Wichita

By _____
Gary E. Rebenstorf, Director of Law
City of Wichita

Agenda Item 17.

City of Wichita
City Council Meeting
April 11, 2006

Agenda Report No. 06-0390

TO: Mayor and City Council

SUBJECT: Repair or Removal of Dangerous & Unsafe Structures
Council Districts I, II, and VI

INITIATED BY: Office of Central Inspection

AGENDA: New Business

Recommendations: Adopt the resolutions.

Background: On February 28, 2006 a report was submitted with respect to the dangerous and unsafe conditions on the following nine (9) properties below. The Council adopted resolutions providing for a public hearing to be held on this condemnation action at 9:30 a.m. or as soon thereafter, on April 11, 2006.

Analysis: On February 6, 2006, the Board of Code Standards and Appeals (BCSA) held a hearing on the following properties:

<u>Property Address</u>	<u>Council District</u>
a. 1218 North Cleveland	I
b. 1316 North Kansas	I
c. 1456 North Piatt	I
d. 1513 North Grove	I
e. 2105 North Minnesota	I
f. 2547 Raleigh	I
g. 1627 South Lulu	I
h. 3003 North Salina	VI
i. 15300 East Kellogg (U.S. 54)	II

Detailed information/analysis concerning these properties are included in the attachments.

Legal Considerations: Pursuant to State Statute, the Resolutions were duly published twice on March 2, 2006, and March 9, 2006. A copy of each resolution was sent by certified mail or given personal service delivery to the owners and lien holders of record of the described property.

Recommendations/Actions: It is recommended that the City Council close the public hearing, adopt the resolutions declaring the buildings dangerous and unsafe structures, and accept the BCSA recommended action to proceed with condemnation allowing 10 days to start demolition and 10 days to complete removal of the structures. Any extensions of time granted to repair the structures would be contingent on the following: (1) All taxes have been paid to date, as of April 11, 2006; (2) the structures have been secured as of April 11, 2006 and will continue to be kept secured; and (3) the premises are mowed and free of debris as of April 11, 2006 and will be so maintained during renovation.

If any of the above conditions are not met, the Office of Central Inspection will proceed with demolition action and also instruct the City Clerk to have the resolution published once in the official city paper and advise the owner of these findings.

Agenda Item No. 18.

City of Wichita
City Council Meeting
April 11, 2006

Agenda Report No. 06-0391

TO: Mayor and City Council

SUBJECT: 2007 Health Insurance Program

INITIATED BY Department of Finance

AGENDA: New Business

Recommendation: Approve the 2007 health insurance plan.

Background: The City uses a Health Insurance Advisory Committee (HIAC) to monitor health insurance programs for employees, and recommend new/renewal programs or changes in health coverage and cost, as required. The Committee includes representatives from the Fraternal Order of Police, International Association of Firefighters, Service Employees International, Teamsters unions, as well as the (non-union) Employees Council and Management staff.

The City Council directed staff to receive competitive bids for the City of Wichita's 2005/2006 health insurance plan. On October 12, 2004, the City Council accepted the recommendation of the Health Insurance Advisory Committee to approve Coventry Health Care of Kansas, Inc. as the medical and prescription provider for 2005 and 2006.

Analysis: Coventry Health Care was selected as the preferred vendor as being most responsive to the Request For Proposal. Coventry was the low responder for the 2005 fully insured medical plan and insured prescription drug plan, with a total estimated aggregate cost for both medical and prescription of \$20,851,766 (exclusive of any plan changes). This was approximately 3.3% less than the 2004 medical and prescription drug plan. Coventry Health Care also provided a 2006 rate cap guarantee of not more than 10.9%, which also was approved. The agreement also included an increase cap on 2007 premium rates using a blended (medical and drug) trend assumption of 11.1% per annum and a blended (medical and drug) retention assumption of 12.1% to calculate premium rates for the 2007 policy year.

On November 4, 2005, Coventry Health Care offered the City a 2007 rate cap guarantee of not more than 13.7%. Subsequently, on March 7, 2006, Coventry Health Care offered the City a 2007 renewal with an 11.4% premium increase. This was 2.3% less than the original 2007 rate cap guarantee. Through the diligent efforts of Hilb, Rogal & Hobbs (HRH), the City's benefit consultant, HRH was able to negotiate a 2007 premium of 9.5%. This rate is 4.2% lower than the original Coventry 2007 rate cap guarantee. It is also 1.4% less than the 2006 premium increase of 10.9%.

The City's health and benefits consultant, Hilb, Rogal & Hobbs, reviewed the 2007 data and believe the 9.5% increase is justified.

The Health Insurance Advisory Board met on March 28, 2006 and recommended the following:

The Health Insurance Advisory Committee proposes acceptance of the 9.5% rate increase from Coventry Health Care for 2007, contingent on the City Manager's input and a Request for Proposal (RFP) if deemed necessary by the City Council.

There are no changes to the plan for 2007.

Financial Considerations: The renewal quote to purchase medical, prescription and vision coverage would require total monthly premiums of \$334.58/single and \$1,000.67/family. The City Council approved the 2006-08 proposal with Vision Services Program (VSP) on September 20, 2005.

City Council approval of the recommended plan, maintaining an 80%/20% premium split, would result in monthly premiums for 2007 health insurance (medical, prescription and vision) as listed below:

	2006 Insurance Premiums				2007 Insurance Premiums	
	City Share		Employee Share		City Share	Employee Share
	80%	20%	80%	20%		
Single	\$245.13		\$61.28		\$267.66	\$66.92
Family	\$732.92		\$183.24		\$800.55	\$200.12

A financial summary of Coventry Health Care of Kansas, Inc. is on file in the Department of Finance.

Legal Considerations: The contracts and related documents will be approved as to form by the City Attorney's office.

Recommendation/Action: It is recommended that the City Council accept the recommendation of the Health Insurance Advisory Committee, to accept the 9.5% rate increase from Coventry Health Care for 2007, contingent on the City Manager's input and a Request for Proposal (RFP) if deemed necessary by the City Council, and authorize the required signatures.

Agenda Item No. 19.

City of Wichita
City Council Meeting
April 11, 2006

Agenda Report No. 06-0392

TO: Mayor and City Council Members

SUBJECT: Order of business at City Council Consent Agenda/Workshop Meetings

INITIATED BY: City Council

AGENDA: New Business

Recommendation: Adopt the Resolution pertaining to changes to the order of business at City Council Consent Agenda/Workshop meetings.

Background: At the workshop conducted on April 4, 2006, the City Council discussed the processes and procedures to follow for City Council Consent/Workshop meetings. The City Council considered the changes to the order of business with the goal of having City Council meetings being more accommodating to citizens, neighborhood associations, community groups, business entities and associations, profit and non-profit companies, other governmental entities, and all others that have business to conduct with the City. The City Council directed the City Attorney to prepare a resolution encompassing the processes and procedures favored by the City Council members.

Analysis: The proposed resolution addresses the order of business for City Council Consent Agenda/Workshop meetings as to pulling and voting on items from the Consent Agenda, automatic deferral of pulled items to the next regular meeting and procedures to follow for pulling items.

Under the proposed resolution, the new procedure for Consent Agenda/Workshop meetings will be effective, beginning with the City Council meeting of April 25, 2006.

Financial Consideration: None.

Legal Consideration: The Council has the authority to adopt a resolution establishing the order of business at City Council Consent/Workshop meetings. The proposed resolution has been drafted and approved as to form by the Law Department.

Recommendations/Actions: Adopt the Resolution pertaining to changes to the order of business at City Council Consent Agenda/Workshop meetings.

Attachment - Resolution Pertaining To The Order Of Business At City Council Consent Agenda/Workshop Meetings

A RESOLUTION OF THE GOVERNING BODY OF THE
CITY OF WICHITA PERTAINING TO THE ORDER OF BUSINESS AT CITY COUNCIL
CONSENT AGENDA/WORKSHOP MEETINGS

WHEREAS, the Governing Body of the City of Wichita is committed to the goal of having City Council meetings being more accommodating to citizens, neighborhood associations, community groups, business entities and associations, profit and non-profit companies, other governmental entities, and all others that have business to conduct with the City, and

WHEREAS, the Governing Body of the City of Wichita usually sets aside the fourth Tuesday of every month for meetings to consider workshop topics and a structured consent agenda, and

WHEREAS, at the workshop conducted on April 4, 2006, the Governing Body of the City of Wichita considered the processes and procedures to follow for such City Council Consent/Workshop meetings, and

WHEREAS, the Governing Body of the City of Wichita directed staff to prepare a resolution to establish the order of business for City Council Consent Agenda/Workshop meetings, and

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY
OF WICHITA THAT;

1. The Governing Body of the City of Wichita, Kansas hereby establishes the following processes and procedures for the conduct of City Council Consent Agenda/Workshop meetings, beginning with the City Council meeting of April 25, 2006.
2. The separate items appearing on the Fourth Tuesday Consent Agenda, shall be considered collectively as a consensus agenda and an affirmative vote of the City Council on the consent agenda will allow and be construed as an affirmative vote to take the recommended action as stated on each item.
3. At City Council Consent Agenda/Workshop meetings, after the Mayor, or presiding officer if the Mayor is absent, announces the Consent Agenda for consideration, any member of the City Council may request that any item be pulled from the Consent Agenda. Any such item pulled from the Consent Agenda will automatically be deferred to the next regular meeting of the City Council and appear as an item on the Unfinished Business portion of the agenda.
4. The City Manager, or a staff member designated by the City Manager, will advise the City Council as soon as it is known that an item on the Consent Agenda is time sensitive and requires immediate action.
5. Any member of the City Council may request that any item on the Consent Agenda be considered separately for purposes of declaring a conflict of interest or voting against the

item. In such case, the agenda item will not be deferred, but will be voted on separately by the City Council.

6. This Resolution and the provisions herein shall remain in effect until amended and/or superseded by an ordinance or resolution adopted by the Governing Body.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, this date _____.

Carlos Mayans, Mayor

Attest:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law and City Attorney

Agenda Item No. 20.

City of Wichita
City Council Meeting
April 11, 2006

Agenda Report No. 06-0393

TO: Mayor and City Council

SUBJECT: PUD2005-00005; PUD #21 – Creation of the Kirk Planned Unit Development. Generally located 1/3 mile south of 21st Street North and west of Maize Road. (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendations Approve the PUD subject to the proposed provisions and uses as presented by the applicant (9-0).

MAPD Staff Recommendations: Approve, subject to Staff's amendments to the applicant's PUD.

DAB Recommendations: Deny (10-0) both the applicant's proposed PUD and Staff's amended PUD and leave the site's "SF-5" zoning in place with CU-156 over the excavation site and recognizing the excavation site's current legal nonconformance status, per the Zoning Administrator's August 25, 2005 letter.

Background: The applicant proposes an approximately 4.3-acre, two parcel mixed residential, public – civic and commercial use Planned Unit Development (PUD). The PUD includes a 150-foot wireless communication facility (tower) as one of its proposed commercial use. The site is located approximately 1/3 of a mile south of 21st Street North and 170-feet west of Maize Road. The unplatted site is currently zoned "SF-5" Single-family Residential. The western 3.1-acres of the site has a Conditional Use overlay, CU-156, which permitted a metal agricultural storage building for agricultural and non-agricultural storage. CU-156 was approved by the Sedgwick County Commission December 12, 1973. The eastern 1.2-acres of the site is not part of the CU-156 overlay. At the time of the approval of CU-156, the entire site was identified as being zoned "R-1" Suburban Residential.

Currently, the western portion of the site is developed for Kirk's Excavating, and is located in CU-156. On this portion of the site, there is a metal storage building with one side of it open, a metal garage/storage building, a metal office building, what appears to be a private dispatch tower (85-feet tall, per the applicant's attached October 24, 2005 letter), a small shed, outdoor stockpiles (approximately 6 to 8-feet tall) of dirt and gravel, tractors, various types of trucks, scrapers, trailers and other equipment used by the excavation business. There is a wooden privacy fence along the excavation company's south and north sides where it abuts "SF-5" zoned single-family residences and a church. There is no solid screening along the site's west (excavation company) side where it abuts "SF-5" zoned undeveloped land. On August 15, 2005 (attached letter), the applicant completed a "Nonconforming Registration Form" to determine if the site's (Parcel 1) current excavation business was a legal nonconforming use. In the attached letter dated August 25, 2005, the Zoning Administrator confirmed the excavation business was a legal nonconforming use, while noting its current extensive outdoor storage of equipment and materials. In that same letter, the Zoning Administrator stated that if there was a significant increase in outdoor storage (stockpiles) or if construction of another building was desired, an amendment to CU-156 or rezoning of the site might be required.

The eastern 1.02-acres of the site is currently developed with a single-family residence. There is an evergreen hedge (over 6-foot tall) between the site's eastern 1.02-acre portion and the abutting "NO" Neighborhood Office zoned medical – dental offices. The entire site has no frontage on Maize Road. Access to Maize Road to the proposed PUD parcels is an existing 30-foot drive (ingress-egress easement), which passes by the south side of the existing medical – dental offices.

The applicant's PUD site plan shows the site divided into two parcels. The two parcels reflect the current configuration of the western excavation business (Parcel 1, CU-156) site and the eastern single-family residence (Parcel 2) site. The site plan shows the existing buildings, general groupings of existing plants/landscaping and the general area where materials are stockpiled outdoors. The site plan's general provisions propose standards for utilities, lighting, signage, drainage (at the time of platting), ownership's responsibilities, fire, circulation/access, screening and landscaping. The site plan shows access to the PUD through the previously mentioned existing drive. The site plan does not show the existing solid screening, lighting, parking, dispatch tower or signage. The proposed uses for the two parcels shown on the site plan were amended in the applicant's October 24, 2005 letter to Planning staff.

As previously mentioned, development abutting the site's east side, on properties zoned "NO", Neighborhood Office, are a single-story dental office (built 2001) and a soon to be finished single-story medical office. These two buildings/developments are between the site and Maize Road. Abutting the south side of the site, zoned "SF-5", is the Winwood Addition (recorded January 2, 1996), with its approximately 49 to 50 single-family residences. The partially developed 33.37-acre Westlink Christian Church Addition (recorded June 15, 1998) abuts the site's north and west sides. All of the Westlink Christian Church Addition is zoned "SF-5" with the north portion of the subdivision developed as a church and its parking (built after 1998), while the western portion remains undeveloped. Single-family residences, zoned "SF-5", are west of the churches undeveloped western portion.

Beyond the development in the site's immediate area, on either side of Maize Road, between 13th and 21st Streets North, commercial development is located at the arterial intersections (zoned predominately "LC" Limited Commercial) with predominately single-family residential development (zoned "SF-5") between these commercial nodes. An exception is a large (37.81-acre) cemetery, zoned "SF-5" with a Conditional Use overlay(s), located midway between 13th and 21st Streets North. There is also a small bundle of "TF-3" zoning southeast of the site, closer to the 13th and Maize Road intersection.

According to the "FCC Antenna Location Map for Wichita and Sedgwick County", the nearest cellular tower is approximately ¼ mile north of 29th Street North and approximately ¼ mile west of Maize Road. The nearest microwave tower is located approximately ¼ mile south of 13th Street North and midway between Tyler and Maize Roads. There has been an application for an Administrative Adjustment for a cellular tower north of the site, on the south side of 21st Street North and west of Maize Road.

Analysis: At the November 3, 2005 MAPC meeting, the applicant's agent requested a two-week deferral. There were people present at this meeting wanting to discuss the proposed PUD. The MAPC gave them the opportunity to speak about the case at this meeting or in two weeks, if the deferral was granted. Those wanting to discuss the case advised the MAPC that they would prefer to speak about the case when the MAPC was ready to make a recommendation on the PUD. The MAPC then moved to approve the requested two-week deferral (11-0) and advised the members of the public not to file protest petitions until the after the case was considered at the November 17, 2005 MAPC meeting. Planning staff had received phone calls protesting the requested zone change prior to the MAPC meeting.

DAB V considered this case at their November 7, 2005 meeting, and unanimously recommended (10-0) that both the PUD as proposed by the applicant and as amended by Planning staff both be denied. What follows is a comparison of the applicant's proposed PUD and staff's proposed amendments to that PUD.

The applicant's proposed PUD: General Provisions, 1-15 (see attached applicant's PUD General Provisions) and Parcel Descriptions for Parcels 1 & 2, which included the uses allowed on the two parcels. The applicant's proposed uses (see attached Oct 24, 2005 applicant's letter) for the two parcels are identical, with two exceptions. First, the western Parcel 1 is proposed to have a 150-foot wireless communication facility (see applicant's attached letter). Second, the eastern Parcel 2 is proposed to have ancillary parking. Per the Unified Zoning Code (UZC), both uses are considered commercial types of uses.

Uses common to both parcels include:

- (a) Single-family residential, duplex residential, multi-family residential (see letter) and assisted living. Per the UZC, all these uses are considered residential types of uses.
- (b) Group home, limited and general and convalescent care, limited and general. Per the UZC, all these uses are considered public - civic types of uses.

(c) General office, personal improvement services and construction sales and services, as defined in the applicant's attached letter. The use of the wireless communication facility is included in Parcel 1's definition of construction sales and services and not in Parcel 2's. The excavation business currently on Parcel 1 appears to have a private dispatch tower, which is presumably what the applicant is referencing. Per the UZC, all these uses are considered commercial types of uses. (See attached "MAPC'S RECOMMENDATION")

Planning staff amended the applicant's proposed PUD (the applicant did not agree with the following staff's amended version of the PUD) as follows:

- (a) Parcel uses: no 150-foot tower, no multi-family residential uses, and no personnel service uses.
- (b) 35-foot maximum height on all buildings with design and materials used for building similar to the abutting single-family residences.
- (c) "OW" Office Warehouse restrictions on the excavation business (construction sales and services) sunrise to sunset operation hours, a 15-foot maximum on outdoor stockpiles, paving of all current employee and customer parking
- (d) A 14-foot maximum height on lighting with no lighting inside implemented compatibility setbacks.
- (e) Specific language on screening.
- (f) One shared monument sign.
- (g) A revised site plan and platting within a year.

There were many members of the public in attendance at the DAB meeting speaking against the applicant's proposed mixed use PUD. They objected to the introduction of more non-residential uses on the site and their potential impact on traffic and drainage in the immediate area. Another objection was possibility of the 150-foot cellular tower being built next to their homes and the church. Some of the members of the audience noted that if a PUD was approved, that they favored staff's amended PUD. The DAB found the introduction of non-residential uses as allowed by the applicants' proposed PUD and staff's amended PUD as not being compatible with the area's existing single-family residential development. The DAB recommendation for denying the PUD kept the site zoned "SF-5", with CU-156 in place on the western portion and recognizing that, per the Zoning Administrator's August 25, 2005 letter, that the current excavation business was a legal nonconforming use as it was now developed.

During the DAB meeting, the applicant noted that an error in the transfer of the site's zoning from the paper maps to the GIS maps (1999-2001 transfer period) and made this error a critical issue in regards to his proposed uses allowed in the PUD. The error was that the site was erroneously identified as being zoned "GC" General Commercial and not "SF-20" on both the 2000 paper zoning map and the subsequent GIS zoning map. The applicant found the error when speaking with Staff about possible uses on the site, prior to applying for the PUD. The applicant noted that the excavation business had been identified as a commercial use by the Sedgwick County's Appraiser's Office (no mention of zoning by the Appraiser's Office, just the land use) and by the "Existing Land Use Map" used during its 1999 annexation. The applicant's contention was that the recognized commercial use on the site should be reason to allow the additional non-residential uses. The applicant noted that the owners had assumed that they had commercial "GC" zoning because he had been allowed to

expand the excavation business to its present scale. Staff acknowledged the error on the zoning map, but noted that their research on the site has shown that since 1958, when the zoning on the site was first identified, the site had always been zoned some type of rural or some type of single-family residential zoning. Staff could not find, and the applicant could not provide, documentation showing a zoning change request by the owner, the MAPC or the governing body, which is how a zone change can be initiated. Staff noted that since the establishment of the excavation business, the Wichita city limits had expanded to the site and now surrounded it. Staff also noted their reason for denying the use of the 150-foot cellular tower was that, apart from a letter from a wireless carrier stating they wanted to co-locate on the tower (see attached October 29, 2005 letter), the applicant failed to provide any of the documents required in the "Location and Design Criteria" of the "Wireless Communication Master Plan". In fact, the applicant had not identified any of the communication towers that were in the area. Those documents would include a site plan, propagation maps and tower details.

The MAPC considered this case at their November 17, 2005 meeting and approved (9-0) the PUD as proposed by the applicant, in reference to the site plan, its general provisions as listed 1-15, and the uses as proposed in the applicant's October 24, 2005 letter (attached) to staff, which would allow, as one of its commercial uses, the 150-foot cellular tower. There were many members of the public in attendance at the MAPC meeting speaking against the applicant's proposed mixed use PUD. Their objections were the same as those given at the November 7, 2005 DAB meeting. They objected to the introduction of more nonresidential uses on the site, and their potential impact on traffic and drainage in the immediate area and the possibility of the 150-foot cellular tower next to their homes. Staff has received recorded written protest to the MAPC approved PUD that totals over 77.38% of the total property within a 200-foot radius of the outer boundaries of the subject property. When 20% of the total property within a 200-foot radius of the outer boundaries of the subject property protest a zoning change, at least $\frac{3}{4}$ of the Governing Body must vote to approve the PUD to overturn the protest.

On December 16, 2005, the applicant requested a 60-day deferral before the PUD proceeded to City Council for final action; the end of the protest period was December 1, 2005. On March 7, 2006, the applicant requested a 30-day deferral prior to proceeding to City Council for final action.

Financial Considerations: None.

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Concur with the findings of the MAPC and approve the zone change, subject to the recommended provisions of the Planned Unit Development and place the ordinance on first reading; or
2. Return the application to the MAPC for reconsideration.

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

Published in The Wichita Eagle on _____
ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. PUD2005-00005 #21

The creation of the Kirk Planned Unit Development, on property described as:

The west 627.56 feet of the east 874.40 feet of the south 299 feet of the N/2 of the SE/4 of the NE/4 of Section 7, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas. Generally located 1/3 mile south of 21st Street North and west of Maize Road.

SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED AT WICHITA, KANSAS, _____

Carlos Mayans – Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to form:
Gary E. Rebenstorf, City Attorney

(SEAL)

Agenda Item No. 21.

City of Wichita
City Council Meeting
April 11, 2006

Agenda Report No. 06-0394

TO: Mayor and City Council Members

SUBJECT: SUB 2005-96 -- Plat of Towne Parc 8th Addition, Located South of Pawnee and West of Webb Road. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.
MAPC Recommendation: Approve the plat. (12-0)

Background: This site, consisting of 42 lots on 14.03 acres, has recently been annexed into Wichita's city limits. This site is zoned SF-5, Single-Family Residential District.

Analysis: Petitions, 100 percent, and a Certificate of Petitions have been submitted for sewer, water and paving improvements. Restrictive Covenants were submitted to: 1) create a Lot Owners' Association for the ownership and maintenance of the proposed reserves being platted for drainage purposes; and 2) provide four off-street parking spaces per dwelling unit on each lot that abuts a 58-foot street. Since this site is located within the noise impact area of McConnell Airforce Base, an Avigational Easement and Restrictive Covenant have been submitted. An off-site Drainage and Utility Easement has also been submitted.

This plat has been reviewed and approved by the Planning Commission, subject to conditions and recording within 30 days.

Financial Considerations: None.

Legal Considerations: The Certificate of Petitions, Restrictive Covenants, Avigational Easement and Drainage and Utility Easement will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat, authorize the necessary signatures and adopt the Resolutions.

Agenda Item No. 22.

City of Wichita
City Council Meeting
April 11, 2006

Agenda Report No. 06-0395

TO: Wichita Airport Authority

SUBJECT: U.S. Economic Development Administration Application for Aviation Technical Center Funding

INITIATED BY: City Manager's Office

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the grant application.

Background: On March 21, 2006, the Wichita City Council considered providing financial support for the construction of an Aviation Training School at Jabara Airport. Sedgwick County has determined that they will take the lead role for providing technical education and training in Sedgwick County. The County has expressed its intent to construct this facility on Airport Authority property and to be responsible for ensuring payments are made to retire the debt associated with this 36 million dollar project. The City Council took action at its meeting to approve a bonding resolution for a not-to-exceed amount of \$1,600,000 contingent upon successful negotiation of a lease agreement between the Airport Authority and Sedgwick County.

Part of the overall funding plan for this \$36 million project is a \$1,500,000 grant from the Economic Development Administration (EDA). The Wichita Airport Authority and Sedgwick County will be co-applicants for the grant; the South Central Economic Development District (SCKEDD) will be responsible for the grant administration.

Analysis: Sedgwick County is anticipated to approve the EDA grant application at its April 12, 2006 meeting. The application due date is April 15, 2006. The EDA grant funding will be utilized for a portion of the Aviation Training School and other funding sources (Sedgwick County, City of Wichita, the private sector, the State of Kansas, and other federal assistance) will be utilized to fully finance the project.

The Wichita Airport Authority is a co-applicant with Sedgwick County on the EDA grant application because the project will be constructed on airport property. However, the responsibility for project management will be Sedgwick County and SCKEDD will be responsible for grant management as they have a long-standing relationship with EDA and have experience with EDA grant administration.

Financial Considerations: The EDA grant does not affect the resolution passed by the Council on March 21. The City's only financial commitment to the project is an amount not to exceed \$1,600,000.

Legal Considerations: The Law Office will review the complete application prior to the Mayor's signature.

Recommendation/Action: It is recommended that the Wichita Airport Authority approve the EDA grant application and the receipt of funds in the amount of \$1.5 million, and authorize the necessary signatures.

Agenda Item No. 23.

City of Wichita
City Council Meeting
April 11, 2006

Agenda Report No. 06-0396

TO: Wichita Airport Authority

SUBJECT: Air Service Consulting Services – Sabre Consulting

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the budget.

Background: On October 21, 2003, the Wichita Airport Authority authorized staff to advertise, select and enter into contract negotiations with various air service consultants to provide air service strategies and consulting services. On January 6, 2004, a selection committee reviewed proposals and conducted interviews to solicit firms to provide air service support functions at Mid-Continent Airport. Sabre Consulting was one of the firms selected to do air service consulting. On December 14, 2004, the Wichita Airport Authority approved a three-year agreement with Sabre to provide consulting services. The first project covered under the agreement was an updated market study to define and support continued air service development. The cost of the study was \$50,000, with project expenses not to exceed 10% of the cost of professional services. The 2004 agreement allows for additional work to be performed through separate work orders.

Analysis: In order to have the flexibility to address air service deficiencies, and to be responsive as changes in the airline industry occur, funds are needed to conduct various air service studies, route analyses, preparation of presentations to targeted airlines, on-call research and other consulting services. As needs are identified, work orders will be prepared for approval by the Director of Airports.

Financial Considerations: An estimated \$25,000 is necessary to cover upcoming air service consulting projects. Funds are available in the Airport operating budget.

Legal Considerations: None.

Recommendations/Actions: It is recommended that the Wichita Airport Authority authorize the expenditure of budgeted funds not to exceed \$25,000.

Agenda Item No. 24.

City of Wichita
City Council Meeting
April 11, 2006

Agenda Report No. 06-0397

TO: Wichita Airport Authority

SUBJECT: Taxiways "L", "L-1", Compass Pad and Apron Construction
Extension of Taxiway "H" and "H-1"
Wichita Mid-Continent Airport

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the change order.

Background: On August 9, 2005 the Wichita Airport Authority approved a construction contract with Cornejo & Sons in the amount of \$5,985,051.81 for the project.

Analysis: A change order has been prepared to address changes during construction and adjust the construction completion time.

Financial Considerations: The cost of the change order is \$22,112.18. The change order has been approved by the Federal Aviation Administration and will be funded with the approved federal grant and general obligation bonds paid for with airport revenue. The change order is less than one-percent of the contract amount. Funds are available within the current budget.

Legal Considerations: The Law Department has approved the change order to form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the change order and authorize the necessary signatures.

Agenda Item 26.

City of Wichita
City Council Meeting
April 11, 2006

Agenda Report 06-0398

TO: Mayor and City Council Members

SUBJECT: City Council Rules of Procedure

INITIATED BY: City Council Member Skelton

AGENDA: City Council Agenda

Recommendation: Direct the City Attorney to revise and update the City Council Rules of Procedure to coincide with the current structure of the City Council and current state laws.

Background: At the City Council meeting of April 4, 2006, Council member Skelton proposed a revision and update of the City Council Rules of Procedure. Council member Skelton requested that this item be placed on the City Council Agenda for discussion at the April 11, 2006 City Council meeting.

Analysis: The City Council rules have been superseded by state law changes, in part, and should be given a fresh look. Other parts of the rules are outdated and should be amended to reflect the current structure of the City Council. The review and updating of the applicable provisions of the City Code will be a lengthy process.

Financial Considerations: None.

Legal Considerations: The City Council has the legal authority to amend the City Council Rules of Procedure by majority vote, pursuant to the provisions of Section 2.04.170 of the City Code.

Recommendation/Action: Direct the City Attorney to revise and update the City Council Rules of Procedure to coincide with the current structure of the City Council and current state laws.

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